



I, Reed R. Kathrein, declare:

1. I am an attorney at the law firm of Hagens Berman Sobol Shapiro LLP, one of the counsel of record for Plaintiffs in the above action. I make this declaration in support of the Joint Motion to Consolidate Related Cases for All Purposes. I am familiar with the facts set forth herein and will testify to them if necessary.

2. Attached as Exhibits 1-9 are true and correct copies of the complaints filed in the following actions:

EX. NO.	ABBREVIATED CASE NAME	CASE NO.
1	<i>Barton v. Fidelity National Financial, Inc. et al.</i>	08-1341-JSW (N.D. Cal.)
2	<i>Gentilcore v. Fidelity National Financial, Inc. et al.</i>	08-1374-JSW (N.D. Cal.)
3	<i>Blackwell v. Fidelity National Financial, Inc. et al.</i>	08-1928-MEJ (N.D. Cal.)
4	<i>Romero v. Fidelity National Financial, Inc. et al.</i>	08-3391-JSW (N.D. Cal.)
5	<i>Martinez v. Fidelity National Financial, Inc. et al.</i>	08-0499-MJL (S.D. Cal.)
6	<i>Davis v. Fidelity National Financial, Inc. et al.</i>	08-1897-DSF (C.D. Cal.)
7	<i>Kothari v. Fidelity National Financial, Inc. et al.</i>	08-0440-DSF (C.D. Cal.)
8	<i>Magana v. Fidelity National Financial, Inc. et al.</i>	08-0591-DSF (C.D. Cal.)
9	<i>Moynahan v. Fidelity National Financial, Inc. et al.</i>	08-0620-AHS (C.D. Cal.)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 23rd day of July, 2008, at Berkeley, California.

/s/ Reed R. Kathrein  
REED R. KATHREIN

**CERTIFICATE OF SERVICE**

I hereby certify that on July 23, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Reed R. Kathrein  
REED R. KATHREIN

CM/ECF ?

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## Mailing Information for a Case 3:08-cv-01341-JSW

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)



## Mailing Information for a Case 3:08-cv-01374-JSW

### Electronic Mail Notice List

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- (No manual recipients)

## Mailing Information for a Case 3:08-cv-01928-MEJ

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- (No manual recipients)

## Mailing Information for a Case 3:08-cv-03391-JSW

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The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

# **EXHIBIT 1**

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LYNN BARTON, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC.,  
FIDELITY NATIONAL TITLE INSURANCE  
COMPANY, TICOR TITLE INSURANCE  
COMPANY, TICOR TITLE INSURANCE  
COMPANY OF FLORIDA, CHICAGO TITLE  
INSURANCE COMPANY, NATIONAL TITLE  
INSURANCE OF NEW YORK, INC.,  
SECURITY UNION TITLE INSURANCE  
COMPANY, THE FIRST AMERICAN  
CORPORATION, FIRST AMERICAN TITLE  
INSURANCE COMPANY, UNITED  
GENERAL TITLE INSURANCE COMPANY,  
LANDAMERICA FINANCIAL GROUP, INC.,  
COMMONWEALTH LAND TITLE  
INSURANCE COMPANY, LAWYERS TITLE  
INSURANCE CORPORATION,  
TRANSNATION TITLE INSURANCE  
COMPANY, STEWART TITLE GUARANTY  
COMPANY and STEWART TITLE  
INSURANCE COMPANY

Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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1 Plaintiff, Lynn Barton, by her attorneys, on behalf of herself and all others similarly  
2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the  
3 United States and based on statutes of the State of California against the above named defendants,  
4 demand a trial by jury, and complaining and alleging as follows:

## 5 I. INTRODUCTION

6 1. From the consumer's point of view, title insurance differs greatly from other, more  
7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies  
8 protect consumer from an event that may occur in the future, title insurance offers protection from  
9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from  
11 problems that occurred in the past and may affect the title to the real estate that a consumer is  
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In  
13 fact, almost all title policies are based on a single set of form policies published and maintained by  
14 the national trade association, the American Land Title Association. Furthermore, the end goal of  
15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search  
16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real  
17 value of the title policy which is written to cover only unknown defects in title at the time of  
18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
21 paperwork and signings that culminate in the closing of a home purchase. Consumers who  
22 normally shop around for their insurance and carefully compare prices, typically emerge from the  
23 closing on their new home holding an insurance policy that they know virtually nothing about and  
24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size  
26 from regional companies to national affiliates. However, the market is dominated by four groups  
27 of affiliated companies which, combined, sell over 90 percent of the title insurance policies sold in  
28



1 California and which own and control the title plants in many California counties that every title  
2 insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional  
4 insurance carriers, choose not to market their products directly to the consumers who pay for them.  
5 Instead, the title insurance industry operates on what is termed a “reverse competition” model.  
6 Reverse competition means that title companies solicit business referrals from the other major  
7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,  
8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these  
9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs  
10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell  
11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take  
12 significant ownership stakes in local title agents and affiliates of the major title insurers and  
13 thereby get a direct return in profit from the referral of title business to the title agent whom they  
14 partly or wholly own.

15 6. Reverse competition, as the term suggests, isn’t a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets “winning and dining” real estate agents, banks, lenders,  
18 builders, developers and others in an effort to convince these middlemen to steer their home-  
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review or regulation. The companies agree  
23 to fix the price of title insurance far in excess of the risk and loss experience associated with such  
24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.  
25 As a result of their joint rate setting and agreement, no company competes on price to the  
26 consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies  
28 agreed to not compete based on price to the consumer in other states, including California, where



1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive  
 2 prices and to compete based on offering inducements to middlemen. In California, in three  
 3 successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing  
 4 number" of such inducements that are in violation of state law. However, the OIC does not  
 5 actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do  
 6 so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
 8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
 9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant ownership  
 10 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for  
 11 using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in  
 13 California, seek damages arising from defendants' violations of the Sherman Act as well as  
 14 California statutory law.

## 15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16  
 17 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain  
 18 injunctive relief and to recover treble damages and the costs of suit, including a reasonable  
 19 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the  
 20 Class which she represents by reason of defendants' and their co-conspirators' violations, as  
 21 hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Northern  
 23 District of California. The interstate commerce described hereinafter is carried on, in part, within  
 24 the Northern District of California and the conspiratorial acts herein alleged were carried on, in  
 25 part, in the Northern District of California.

26 13. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of  
 27 this Court is appropriate because a substantial part of the events or omissions which give rise to the  
 28

claim occurred in the county of San Francisco. Pursuant to Northern District of California, Local Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is proper.

### III. PARTIES

#### A. Plaintiff

14. Plaintiff, Lynn Barton, is an individual residing in San Francisco County, California. During the Class Period, plaintiff purchased title insurance directly from one or more of the defendants herein and has been injured by reason of the antitrust violations alleged.

#### B. Defendants

15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National does business in California through one or more of its subsidiaries, including but not limited to, defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do business in California.

16. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. FNTIC does business in California, is a licensed title insurance company in California and is registered to do business in California.

17. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor does business in California, is a licensed title insurance company in California and is registered to do business in California.

18. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. TTICF does business in California, is a licensed title insurance company in California and is registered to do business in California.

1           19. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri  
2 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
3 Chicago Title does business in California, is a licensed title insurance company in California and is  
4 registered to do business in California.

5           20. Defendant National Title Insurance of New York, Inc. ("NTINY") is a New York  
6 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
7 NTINY does business in California, is a licensed title insurance company in California and is  
8 registered to do business in California.

9           21. Defendant Security Union Title Insurance Company ("SUTIC") is a California  
10 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
11 SUTIC does business in California, is a licensed title insurance company in California and is  
12 registered to do business in California.

13           22. The Fidelity family of title insurance companies (collectively, "Fidelity") – which  
14 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,  
15 and their affiliates – is engaged in selling title insurance to purchasers of commercial and  
16 residential real estate throughout the United States, including California. Nationally, Fidelity  
17 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly  
18 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)  
19 and since TIRSA's inception have charged title insurance rates in New York that TIRSA  
20 collectively sets.

21           23. The Fidelity family of title insurance companies and their affiliates are wholly-  
22 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
23 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
24 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title  
25 insurance companies engaged in the conduct challenged herein with the approval and assent of  
26 defendant Fidelity National.

1           24. Defendant The First American Corporation ("First American") is a California  
2 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. First  
3 American does business in California through one or more of its subsidiaries, including but not  
4 limited to, defendants First American Title Insurance Company and United General Title Insurance  
5 Company.

6           25. Defendant First American Title Insurance Company ("FATIC") is a California  
7 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. FATIC does  
8 business in California, is a licensed title insurance company in California and is registered to do  
9 business in California.  
10

11           26. Defendant United General Title Insurance Company ("UGTIC") is a Colorado  
12 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does  
13 business in California, is a licensed title insurance company in California and is registered to do  
14 business in California.

15           27. The First American family of title insurance companies (collectively, "First  
16 American") – which includes defendants First American, FATIC and UGTIC, and their affiliates –  
17 is engaged in selling title insurance to purchasers of commercial and residential real estate  
18 throughout the United States, including California. Nationally, First American accounts for  
19 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First  
20 American Title was a founding member of TIRSA and since TIRSA's inception has charged title  
21 insurance rates in New York that TIRSA collectively sets.  
22

23           28. The First American family of title insurance companies and their affiliates are  
24 wholly-owned and controlled by defendant The First American Corporation. Through its  
25 subsidiaries, First American is a provider of title insurance, business information, and related  
26 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
27  
28



1 American family of title insurance companies and their affiliates engaged in the conduct  
2 challenged herein with the approval and assent of defendant First American.

3 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
4 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
5 business in California through one or more of its subsidiaries, including but not limited to,  
6 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation  
7 and Transnation Title Insurance Company.

8 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a  
9 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,  
10 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
11 California and is registered to do business in California.

12 31. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska corporation  
13 with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does  
14 business in California, is a licensed title insurance company in California and is registered to do  
15 business in California.

16 32. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska  
17 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
18 TNTIC does business in California, is a licensed title insurance company in California and is  
19 registered to do business in California.

20 33. The LandAmerica family of title insurance companies (collectively,  
21 "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their  
22 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real  
23 estate throughout the United States, including California. Nationally, LandAmerica accounts for  
24 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.  
25 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's  
26 inception have charged title insurance rates in New York that TIRSA collectively sets.

27 34. The LandAmerica family of title insurance companies and their affiliates are  
28 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its

1 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
2 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
3 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance  
4 companies and their affiliates engaged in the conduct challenged herein with the approval of  
5 defendant LandAmerica.

6 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation  
7 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in  
8 California, is a licensed title insurance company in California and is registered to do business in  
9 California.

10 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation  
11 with its principle place of business at 300 E. 42<sup>nd</sup> St., Floor 10, New York, NY 10017. STIC does  
12 business in California, is a licensed title insurance company in California and is registered to do  
13 business in California.

14 37. The Stewart family of title insurance companies (collectively, "Stewart") – which  
15 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to  
16 purchasers of commercial and residential real estate throughout the United States and California.  
17 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006  
18 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's  
19 inception has charged title insurance rates in New York that TIRSA collectively sets.

20 38. Together, defendants account for more than 85 percent of the title premiums  
21 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,  
22 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,  
23 defendants charged California consumers in California virtually identical title insurance rates.

#### 24 IV. OTHER ENTITIES

25 39. TIRSA is a voluntary association of title insurers licensed as a rate service  
26 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its  
27 offices in New York City, which until recently were located at the same New York address of  
28 Fidelity Title.

40. TIRSA annually compiles from its members statistical data relating to their title insurance premiums, losses and expenses and submits this information in aggregate form to the New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has collectively set. Similarly, the California OIC has not actually held a public hearing or conducted any other review or regulation of the title insurance rates in California for thirty years.

41. TIRSA's membership is comprised of defendant insurers and all other title insurers that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority voting block which, according to TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

42. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof.

## V. CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who purchased directly, from one or more of the defendants and/or their co-conspirators title insurance for residential and commercial property in California during the four year period preceding this lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number of potential Class members is so numerous that joinder is impracticable.

44. Plaintiff, as representative of the Class, will fairly and adequately protect the interest of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those of the Class members.

45. Except as to the amount of damages each member of the Class has by itself sustained, all other questions of fact and law are common to the Class, including but not limited to,

the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and the effects of such violation.

46. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a result of paying supracompetitive prices for title insurance in California. These supracompetitive prices were achieved as a result of defendants' illegal price-fixing activities and market allocation and division.

47. Members of the Class include hundreds of thousands, if not millions, of consumers. They are so numerous that their joinder would be impracticable.

48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with injury by the anticompetitive conduct detailed herein.

49. Defendants have acted, continued to act, refused to act and continued to refuse to act on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final injunctive relief with respect to the Rule (b)(2) Class as a whole.

50. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of consumers. They are so numerous that their joinder would be impracticable.

51. Common questions of law and fact exist with respect to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law or fact common to the class are the following:

- Whether defendants have engaged in the alleged illegal price-fixing activity and market allocation and division.
- The duration and scope of defendants' alleged illegal price-fixing and market allocation and division activity.
- Whether defendants' alleged illegal price-fixing and market allocation and division has caused higher prices to plaintiffs and other purchasers of title insurance in California.
- Whether the Insurance Commissioner has actively supervised defendants' price fixing and market allocation and division.



1           52. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's  
2 claims are typical of the claims of the Class and they will fairly and adequately reflect the interests  
3 of the Class. Counsel competent and experienced in federal class action and federal antitrust  
4 litigation has been retained to represent the Class.

5           53. This action is superior to any other method for the fair and efficient adjudication of  
6 this legal dispute since joinder of all members is not only impracticable, but impossible. The  
7 damages suffered by certain members of the Class are small in relation to the expense and burden  
8 of individual litigation and therefore it is highly impractical for such Class members to seek redress  
9 for damages resulting from defendants' anticompetitive conduct.

10           54. There will be no extraordinary difficulty in the management of the Class action.

## 11                                   **VI. TRADE AND COMMERCE**

12           55. During all or part of the period in suit, defendants and their co-conspirators were  
13 sellers of title insurance in California.

14           56. During the period in suit, the defendants sold substantial quantities of title insurance  
15 in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United  
16 States paid \$17 billion for residential title insurance policies.

17           57. During the period in suit, Class members from locations outside California  
18 purchased commercial or residential property and title insurance within California.

19           58. During the period in suit, the defendants were the major sellers of title insurance in  
20 the United States and California. Defendants controlled in excess of 85 percent of the market for  
21 title insurance in the United States and California.

22           59. The activities of the defendants and their co-conspirators, as described herein, were  
23 within the flow of interstate commerce and substantially affected interstate commerce.

## 24                                   **VII. FACTUAL ALLEGATIONS**

### 25           **A. The Nature of Title Insurance**

26           60. Title insurance is one of most costly items associated with the closing of a real  
27 estate transaction. In California, rates for title insurance are based on a percentage of the total  
28 value of the property being insured. For residential properties, this price ranged in 2005 from

1 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more  
2 expensive homes and commercial properties, these prices are significantly higher. This amount  
3 spent on title insurance has risen dramatically over the past decade.

4 61. Title insurance serves an important purpose. It protects the purchaser of a property  
5 from any unidentified defects in the title that would in any way interfere with the full and complete  
6 ownership and use of the property with the ultimate right to resell the property. Title insurance is  
7 required by lenders in most residential and commercial real estate transactions.

8 62. Consumers exercise little discretion in choosing the title insurer from which they  
9 purchase the insurance. That decision is typically made for them by their lawyer, mortgage broker,  
10 lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not challenged.  
11 Most consumers do not even become aware of the price they will pay and to which insurer they  
12 will pay it until the actual closing of the real estate transaction. By then it's too late, consumers  
13 can't attempt to negotiate a better title insurance price or alternate provider for fear of delaying or  
14 derailing the entire transaction. There is no shopping around. There is no negotiation of price.

15 63. This dynamic basically removes the sale of title insurance from the normal  
16 competitive process. Unlike the regular forces of supply and demand that keep most industries and  
17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.  
18 The purchasers of the insurance, in most instances, are not the ones making the purchasing  
19 decisions. And, they are certainly in no position to question the price.

20 64. The most effective but illegal way for a particular title insurer to get business is to  
21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to  
22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are  
23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business  
24 services and other financial enticements. Therefore, it is through higher pricing (which allows for  
25 generous inducements and kick-backs), not lower pricing, that provides the best way for title  
26 insurers to compete and increase their business.

1     **B.     Price-Fixing in the Large Markets**

2           65.     New York is one of several states in which the leading title insurers collectively fix  
3     their prices through a rate-setting organization like TIRSA. There are two principal cost  
4     components that go into TIRSA's calculation. One comprises the risk associated with issuing the  
5     title policy. The other comprises the "agency commissions" paid to title agents.

6           66.     The risk component covers the risk the title insurer bears for any undiscovered  
7     defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of  
8     loss to the insurer. That is because title insurance protects against unknown *prior* events that cause  
9     defects in title. With a proper search and examination of prior ownership records, any such defects  
10    can and almost always are readily identified and excluded from the policy's coverage.

11    Consequently, the average claim payout on a title insurance policy in the United States amounts to  
12    only about 5 percent of the total premium collected. This is very different from property coverage  
13    (such as auto and home insurance) – which protects against *future* occurrences over which the  
14    insurer has little to no control – where the average claim payout amounts to about 80 percent of the  
15    total premium.

16           67.     The "agency commissions" component of the title insurance rate covers payments  
17    made to title agents. Defendants have an ownership or management stake in many of the title  
18    agencies to which these payments are made. A small portion of these payments is for the search  
19    and exam of prior ownership records of the property being purchased to identify any liens,  
20    encumbrances, burdens, exclusions, or other defects in the title. The search and exam function  
21    does not involve the spreading or underwriting of risk, and title insurers typically outsource this  
22    task to title agents.

23           68.     The remainder, and by far the bulk, of the agency commissions are comprised of  
24    costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial  
25    inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers,  
26    brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These  
27    payments have nothing to do with the issuance of title insurance and are made by title insurers  
28    merely to inflate their revenues and steer business their way.



69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title insurance premium is based on the so-called "costs" associated with the payment of agency commissions. Only 15 percent is based on costs associated with the risk of loss.

70. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate Manual. These rates are tied to the value of the property being insured. This is so despite the fact that the costs associated with agency commissions are entirely unrelated to the value of the property. Indeed, agency kickbacks and enticements have little to do with producing a particular title policy and provide no value – proportional to property value or otherwise – to the consumer. Even search and exam costs are unrelated to property value. They instead depend on the age of the property, the complexity of the ownership history, and the accessibility of prior ownership records.

71. There are other states in which the defendants overly meet and agree to fix the rates for title insurance as part of a formal collective rate setting process.

#### C. TIRSA's Formation

72. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal Trade Commission ("FTC") challenge to the collective rate setting activity of many of these associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of these rating bureaus must be actively supervised by the state.

73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC contended that the respective state insurance departments merely rubber-stamped this portion of the collectively fixed rates without any independent review or analysis of their reasonableness or cost justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to "exercise[] sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties." *Ticor*, 504 U.S. at 634-35.

1           74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in  
2     *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the  
3     collective rate-setting of certain state rating bureaus was improper because it was not actively  
4     supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed us  
5     that a state's rubber stamp is not enough. Active supervision requires the state regulatory  
6     authorities' independent review and approval." *Id.* at 1139.

7           75. Defendants formulated TIRSA's first rate manual and procedure soon after the  
8     Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to  
9     get around the rigors of state oversight required by *Ticor*. They have done so by calculating a  
10    single rate that comprises both risk and agency commission costs and by outsourcing to title agents  
11    the agency commission costs. In this way, defendants avoid providing the Insurance Department  
12    with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed  
13    rates.

14          76. TIRSA merely submits an aggregated figure that is supposed to represent the total  
15    agency commission costs. Embedded within this figure is the vast quantity of dollars that are  
16    funneled to and through the title agencies as kickbacks, financial inducements and other costs  
17    unrelated to the issuance of title insurance. Defendants' design in all of this has been to effective  
18    "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from  
19    the regulatory scrutiny that *Ticor* demands.

20    **D. Lack of Regulatory Supervision and Authority in New York and Other States**  
21    **Including California**

22          77. There is no provision under the New York Insurance Law for TIRSA to include in  
23    its collectively fixed rates kickbacks and other agency commission payments unrelated to the  
24    issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged  
25    that it lacks the authority to review any agency commission payments. It has likewise recognized  
26    that defendants' outsourcing of agency commission costs has prevented it from performing a  
27    meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public  
28    hearing the New York Insurance Department held – the first in 15 years – where it questioned

1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup  
2 or detail for agency commissions.

3 78. At the hearing, the Insurance Department conceded that it could not properly  
4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost  
5 information on agency commissions that TIRSA does not provide.

6 79. The Insurance Department's recognition that it is not properly supervising TIRSA's  
7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
8 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
9 regulation. The GAO studied the industry conditions of several states, including New York, and  
10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*  
11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 80. Unchecked by regulatory review and insulated from competition, defendants have  
13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits  
14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a  
15 free and open competitive market.

16 81. At the time of TIRSA's formation, the Insurance Department established 5 percent  
17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance  
18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its  
19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a  
20 reasonable premium. However, without the authority or ability to scrutinize agency commission  
21 costs, the Insurance Department has been unable to perform this function. As a result, defendants  
22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in  
23 excess of the 5 percent threshold.

24 82. Through an independent investigation conducted over the past several years, the  
25 New York State Attorney General found that for every dollar of insurance premium defendants  
26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid  
27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only  
28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.



1 These numbers show that title insurers' collectively fixed rates have resulted in profits that  
2 untethered to and vastly exceed the costs of producing such policies.

3 83. The New York Attorney General's investigation further revealed that what was  
4 largely driving these numbers were the kickbacks and other financial inducements defendants were  
5 funneling to and through title agents to secure more business. As reported at the New York  
6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent  
7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",  
8 "automobile expenses", "political contributions", "promotional expenses", and "travel and  
9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 84. The Washington State Insurance Commissioner's October 2006 report found  
11 strikingly similar abuses in Washington. Violations were pervasive and the Commissioner  
12 concluded that consumers were paying too much as a result.

13 85. All of this "excess money" paid to title agents not only works to steer business to  
14 defendants. It also serves to boost defendants' own profits through the inflated revenues they  
15 obtain to cover these agency payments and through their ownership or management stake in many  
16 of these agencies.

17 86. Defendants are competitors in the sale of title insurance to consumers throughout  
18 the United States. These title insurers have agreed and engaged in concerted efforts to  
19 (i) collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in  
20 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,  
21 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed  
22 "costs" from regulatory scrutiny by funneling them to and through title agents over which the  
23 government agencies have no ability or authority to regulate.

24 87. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of the  
25 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of  
26 competition and questions about the reasonableness of prices including:  
27  
28

- Consumers find it difficult to shop for title insurance, therefore, they put little pressure on insurers and agents to compete based on price;
- Title agents do not market to consumers, who pay for title insurance, but to those in the position to refer consumers to particular title agents, thus creating potential conflicts of interest;
- A number of recent investigations by HUD and state regulatory officials have identified instances of alleged illegal activities with the title industry that appear to reduce price competition and could indicate excessive prices;
- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
- In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

88. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to oversee title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws. In part, this situation has resulted from a lack of resources and limited coordination among different regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary penalty, and alternative title insurance models. [*Id.* at 41; footnotes omitted.]



**E. Competition Based on Kickbacks and Inducements But Not Rates**

89. Having agreed to fix or stabilize prices in New York and other states where they overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

90. In other words, as a direct result of these meetings where rates were agreed to, these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well. To compete on rates in other states could and would imperil their ability to maintain the agreed rate in states like New York.

91. As is the case in New York, a lack of regulatory authority over rates created an environment in which a conspiracy can and did succeed. No agency was examining why all the rates were virtually identical, and no agency was examining whether the costs associated with these premiums were reasonable. This is an environment which is conducive to price fixing.

92. In California, there is a lack of regulatory authority and oversight over title insurance companies. The rates in California are not set as part of a deliberate state intervention and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in this case went into effect without review.

**F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive Rate Setting**

93. In addition to the uniformity of rates, other facts suggest that it is more plausible than not that rates have been set based on an agreement to fix prices.

94. In theory, the chain of title should be documented back to its historic grant of ownership centuries in the past. Fear about a possible title defect in the distant past is widely used as a justification by title agencies when convincing property buyers to purchase an owner policy in addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however, saves much time and money when the search is limited to one or two transactions. They rely on the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance company's legal department, the expected cost of compensation is likely to be less than the sum of added overhead costs of routinely tracing back every chain of title to the earliest registered owner in the distant past.

1           95. Title insurance industry officials tend to justify the large proportion of the premium  
2 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the  
3 alleged high cost of title searching back into the distant past. In fact, a high proportion of  
4 noncommercial properties are searched only through the most recent transaction. No information  
5 is available as to what proportion of claims originate in the distant past. The industry has never  
6 published pertinent statistics. It would have a marketing incentive to publish these statistics if the  
7 risk were significant; that it has not published these statistics indicates that the risk probably is only  
8 slightly greater than zero.

9           96. Many U.S. homes are being resold three or four times in twenty-five years. At each  
10 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough  
11 review of the available title records, inheritance records, family records and records of past or  
12 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect  
13 will decrease every time a property is sold.

14           97. Title searches have become less labor intensive, especially in large urban counties  
15 and cities. More and more of the information is available online. The statistical likelihood that a  
16 title default would be overlooked is a closely held industry secret, but it appears to be so small that  
17 many transactions are now insured on the basis of a search of the last owner's title history or a  
18 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence  
19 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.

20           98. Thus the costs of production have decreased as has the risk of loss yet none of these  
21 factors has resulted in price competition at the consumer level.

22           99. There is a remarkable absence of rate changes by title insurers over the past five  
23 years, despite declining costs of production, increased number of transactions and increased  
24 revenue per transaction. During a period when costs per unit of production declined significantly,  
25 underwritten title companies and title insurers maintained excessive rates. The prices charged by  
26 title insurers and underwritten title companies were not and are not responsive to the changing  
27 costs of production or increasing revenue per transaction at a given set of rates. Again, this is  
28 indicia of an agreement not to compete based on price.

1           100. As noted, the title companies engage in illegal rebates and kickbacks where the title  
2 insurer or the underwritten title company provides money, free services or other things of value to  
3 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates  
4 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra  
5 competitive and that some portion of the overcharge is passed from the underwritten title company  
6 or title insurer to the referrer of business.

7           101. A lack of competition and the ability to control prices is enhanced by the fact that  
8 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
9 title insurer groups declined as title insurers acquired other title insurers. There were few  
10 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled  
11 business arrangements whose addition to the market did not result in greater price competition.

12           102. Access to title plants can be a barrier to entry, but a large barrier to entry exists due  
13 to the established relationships between the entities that can steer the consumer's title and escrow  
14 business and the entities who sell title insurance and escrow services.

15           103. The title insurance market is highly concentrated – a few title insurers account for  
16 the vast majority of title insurance sales – at both the statewide level and at the county level in  
17 California. For example, three title insurer groups account for 77.4% of the market at a statewide  
18 level. At the county level, each individual market was highly concentrated. The GAO found that  
19 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the  
20 ability of companies to fix prices

21           104. The agreement not to compete based on price is also evidenced by the fact that no  
22 company has marketed its services to consumers, the ultimate purchasers of the product. This is in  
23 marked contrast to real insurance, for example, car insurance, where the companies compete  
24 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or  
25 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

**VIII. CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the Sherman Act**

105. Plaintiff incorporates by reference the preceding allegations.

106. Beginning at least as early as February 2004, and continuing thereafter to the present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

107. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance throughout California;

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and

(c) to allocate and divide the market for title insurance in California.

108. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a *per se* violation of Section I of the Sherman Act.

109. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

110. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supra competitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.



111. The aforesaid combination and conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;

(b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

112. During the period of the antitrust violations by defendants and their co-conspirators, plaintiff and each member of the Class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has been injured and damaged in an amount presently undetermined.

## COUNT II

### **Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.***

113. Plaintiff incorporates by reference the preceding allegations.

114. Defendants conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

## COUNT III

### **(California's Business & Professions Code §§ 17200, *et seq.*)**

116. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

117. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.

118. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

119. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than she would or should have absent the conduct complained of.

120. Plaintiff requests that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

**COUNT IV**

## UNJUST ENRICHMENT

121. Plaintiff incorporates by reference the preceding allegations.

122. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

123. Defendant has received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

124. Defendants are aware of their receipt of the above-described benefit.

125. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

126. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

127. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution

1 of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or  
2 wrongful conduct alleged above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff demands:

5 A. That the alleged combination and conspiracy among the defendants and their  
6 co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of  
7 Section 1 of the Sherman Act;

8 B. That the Court declare that the premiums charged are excessive under state law and  
9 order damages;

10 C. That judgment be entered against defendants, jointly and severally, and in favor of  
11 plaintiff, and each member of the Class it represents, for threefold the damages determined to have  
12 been sustained by plaintiff, and each member of the Class it represents, together with the cost of  
13 suit, including a reasonable attorneys' fee;

14 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their  
15 respective officers, directors, agents and employees, and all other persons acting or claiming to act  
16 on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any  
17 manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination,  
18 conspiracy, agreement, understanding or concert of action, adopting or following any practice,  
19 plan, program, or design having a similar purpose or effect in restraining competition; and

20 E. Such other and further relief as may appear necessary and appropriate.

21 **JURY TRIAL DEMANDED**

22 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

23 DATED: March 10, 2008.

24 HAGENS BERMAN SOBOL SHAPIRO LLP

25  
26 By  \_\_\_\_\_

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# **EXHIBIT 2**

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10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 LISA GENTILCORE, on behalf of herself and  
14 all others similarly situated,

15 Plaintiff,

16 v.

17 FIDELITY NATIONAL FINANCIAL, INC.,  
18 FIDELITY NATIONAL TITLE INSURANCE  
19 COMPANY, TICOR TITLE INSURANCE  
20 COMPANY, TICOR TITLE INSURANCE  
21 COMPANY OF FLORIDA, CHICAGO TITLE  
22 INSURANCE COMPANY, NATIONAL TITLE  
23 INSURANCE OF NEW YORK, INC.,  
24 SECURITY UNION TITLE INSURANCE  
25 COMPANY, THE FIRST AMERICAN  
26 CORPORATION, FIRST AMERICAN TITLE  
27 INSURANCE COMPANY, UNITED  
28 GENERAL TITLE INSURANCE COMPANY,  
LANDAMERICA FINANCIAL GROUP, INC.,  
COMMONWEALTH LAND TITLE  
INSURANCE COMPANY, LAWYERS TITLE  
INSURANCE CORPORATION,  
TRANSNATION TITLE INSURANCE  
COMPANY, STEWART TITLE GUARANTY  
COMPANY and STEWART TITLE  
INSURANCE COMPANY

Defendants.

No. 3

1374

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

MMC

CLASS ACTION COMPLAINT

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1 Plaintiff, Lisa Gentilcore, by her attorneys, on behalf of herself and all others similarly  
2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the  
3 United States and based on statutes of the State of California against the above named defendants,  
4 demand a trial by jury, and complaining and alleging as follows:

## 5 I. INTRODUCTION

6 1. From the consumer's point of view, title insurance differs greatly from other, more  
7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies  
8 protect consumer from an event that may occur in the future, title insurance offers protection from  
9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from  
11 problems that occurred in the past and may affect the title to the real estate that a consumer is  
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In  
13 fact, almost all title policies are based on a single set of form policies published and maintained by  
14 the national trade association, the American Land Title Association. Furthermore, the end goal of  
15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search  
16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real  
17 value of the title policy which is written to cover only unknown defects in title at the time of  
18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
21 paperwork and signings that culminate in the closing of a home purchase. Consumers who  
22 normally shop around for their insurance and carefully compare prices, typically emerge from the  
23 closing on their new home holding an insurance policy that they know virtually nothing about and  
24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size  
26 from regional companies to national affiliates. However, the market is dominated by four groups  
27 of affiliated companies which, combined, sell over 90 percent of the title insurance policies sold in  
28

1 California and which own and control the title plants in many California counties that every title  
2 insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional  
4 insurance carriers, choose not to market their products directly to the consumers who pay for them.  
5 Instead, the title insurance industry operates on what is termed a “reverse competition” model.  
6 Reverse competition means that title companies solicit business referrals from the other major  
7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,  
8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these  
9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs  
10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell  
11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take  
12 significant ownership stakes in local title agents and affiliates of the major title insurers and  
13 thereby get a direct return in profit from the referral of title business to the title agent whom they  
14 partly or wholly own.

15 6. Reverse competition, as the term suggests, isn’t a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets “wining and dining” real estate agents, banks, lenders,  
18 builders, developers and others in an effort to convince these middlemen to steer their home-  
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review or regulation. The companies agree  
23 to fix the price of title insurance far in excess of the risk and loss experience associated with such  
24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.  
25 As a result of their joint rate setting and agreement, no company competes on price to the  
26 consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies  
28 agreed to not compete based on price to the consumer in other states, including California, where

1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive  
2 prices and to compete based on offering inducements to middlemen. In California, in three  
3 successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing  
4 number" of such inducements that are in violation of state law. However, the OIC does not  
5 actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do  
6 so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant ownership  
10 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for  
11 using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in  
13 California, seek damages arising from defendants' violations of the Sherman Act as well as  
14 California statutory law.

## 15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16  
17 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain  
18 injunctive relief and to recover treble damages and the costs of suit, including a reasonable  
19 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the  
20 Class which she represents by reason of defendants' and their co-conspirators' violations, as  
21 hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Northern  
23 District of California. The interstate commerce described hereinafter is carried on, in part, within  
24 the Northern District of California and the conspiratorial acts herein alleged were carried on, in  
25 part, in the Northern District of California.

26 13. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of  
27 this Court is appropriate because a substantial part of the events or omissions which give rise to the  
28

claim occurred in the county of Alameda. Pursuant to Northern District of California, Local Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is proper.

### III. PARTIES

#### A. Plaintiff

14. Plaintiff, Lisa Gentilcore, is an individual residing in Alameda County, California. During the Class Period, plaintiff purchased title insurance directly from one or more of the defendants herein and has been injured by reason of the antitrust violations alleged.

#### B. Defendants

15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National does business in California through one or more of its subsidiaries, including but not limited to, defendants Fidelity National Title Insurance Company, Tigor Title Insurance Company, Tigor Title Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do business in California.

16. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. FNTIC does business in California, is a licensed title insurance company in California and is registered to do business in California.

17. Defendant Tigor Title Insurance Company ("Tigor") is a California Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Tigor does business in California, is a licensed title insurance company in California and is registered to do business in California.

18. Defendant Tigor Title Insurance Company of Florida ("TTICF") is a Florida corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. TTICF does business in California, is a licensed title insurance company in California and is registered to do business in California.

1           19. Defendant Chicago Title Insurance Company (“Chicago Title”) is a Missouri  
2 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
3 Chicago Title does business in California, is a licensed title insurance company in California and is  
4 registered to do business in California.

5           20. Defendant National Title Insurance of New York, Inc. (“NTINY”) is a New York  
6 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
7 NTINY does business in California, is a licensed title insurance company in California and is  
8 registered to do business in California.

9           21. Defendant Security Union Title Insurance Company (“SUTIC”) is a California  
10 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
11 SUTIC does business in California, is a licensed title insurance company in California and is  
12 registered to do business in California.

13           22. The Fidelity family of title insurance companies (collectively, “Fidelity”) – which  
14 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,  
15 and their affiliates – is engaged in selling title insurance to purchasers of commercial and  
16 residential real estate throughout the United States, including California. Nationally, Fidelity  
17 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly  
18 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)  
19 and since TIRSA’s inception have charged title insurance rates in New York that TIRSA  
20 collectively sets.

21           23. The Fidelity family of title insurance companies and their affiliates are wholly-  
22 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
23 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
24 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title  
25 insurance companies engaged in the conduct challenged herein with the approval and assent of  
26 defendant Fidelity National.  
27  
28



1           24. Defendant The First American Corporation (“First American”) is a California  
2 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. First  
3 American does business in California through one or more of its subsidiaries, including but not  
4 limited to, defendants First American Title Insurance Company and United General Title Insurance  
5 Company.

6           25. Defendant First American Title Insurance Company (“FATIC”) is a California  
7 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. FATIC does  
8 business in California, is a licensed title insurance company in California and is registered to do  
9 business in California.  
10

11           26. Defendant United General Title Insurance Company (“UGTIC”) is a Colorado  
12 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does  
13 business in California, is a licensed title insurance company in California and is registered to do  
14 business in California.

15           27. The First American family of title insurance companies (collectively, “First  
16 American”) – which includes defendants First American, FATIC and UGTIC, and their affiliates –  
17 is engaged in selling title insurance to purchasers of commercial and residential real estate  
18 throughout the United States, including California. Nationally, First American accounts for  
19 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First  
20 American Title was a founding member of TIRSA and since TIRSA’s inception has charged title  
21 insurance rates in New York that TIRSA collectively sets.  
22

23           28. The First American family of title insurance companies and their affiliates are  
24 wholly-owned and controlled by defendant The First American Corporation. Through its  
25 subsidiaries, First American is a provider of title insurance, business information, and related  
26 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
27  
28

1 American family of title insurance companies and their affiliates engaged in the conduct  
2 challenged herein with the approval and assent of defendant First American.

3 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
4 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
5 business in California through one or more of its subsidiaries, including but not limited to,  
6 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation  
7 and Transnation Title Insurance Company.

8 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a  
9 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,  
10 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
11 California and is registered to do business in California.

12 31. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska corporation  
13 with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does  
14 business in California, is a licensed title insurance company in California and is registered to do  
15 business in California.

16 32. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska  
17 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
18 TNTIC does business in California, is a licensed title insurance company in California and is  
19 registered to do business in California.

20 33. The LandAmerica family of title insurance companies (collectively,  
21 "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their  
22 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real  
23 estate throughout the United States, including California. Nationally, LandAmerica accounts for  
24 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.  
25 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's  
26 inception have charged title insurance rates in New York that TIRSA collectively sets.

27 34. The LandAmerica family of title insurance companies and their affiliates are  
28 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its

1 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
 2 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
 3 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance  
 4 companies and their affiliates engaged in the conduct challenged herein with the approval of  
 5 defendant LandAmerica.

6 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation  
 7 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in  
 8 California, is a licensed title insurance company in California and is registered to do business in  
 9 California.

10 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation  
 11 with its principle place of business at 300 E. 42<sup>nd</sup> St., Floor 10, New York, NY 10017. STIC does  
 12 business in California, is a licensed title insurance company in California and is registered to do  
 13 business in California.

14 37. The Stewart family of title insurance companies (collectively, "Stewart") – which  
 15 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to  
 16 purchasers of commercial and residential real estate throughout the United States and California.  
 17 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006  
 18 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's  
 19 inception has charged title insurance rates in New York that TIRSA collectively sets.

20 38. Together, defendants account for more than 85 percent of the title premiums  
 21 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,  
 22 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,  
 23 defendants charged California consumers in California virtually identical title insurance rates.

#### 24 IV. OTHER ENTITIES

25 39. TIRSA is a voluntary association of title insurers licensed as a rate service  
 26 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its  
 27 offices in New York City, which until recently were located at the same New York address of  
 28 Fidelity Title.

1           40.     TIRSA annually compiles from its members statistical data relating to their title  
2 insurance premiums, losses and expenses and submits this information in aggregate form to the  
3 New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance  
4 Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA's  
5 members. The Insurance Department has never objected to any of the rates TIRSA has collectively  
6 set. Similarly, the California OIC has not actually held a public hearing or conducted any other  
7 review or regulation of the title insurance rates in California for thirty years.

8           41.     TIRSA's membership is comprised of defendant insurers and all other title insurers  
9 that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica,  
10 and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority  
11 voting block which, according to TIRSA's by-laws, allows them to control the operations of  
12 TIRSA and, in particular, TIRSA's collective rate setting activity.

13           42.     Various other persons, firms and corporations not made defendants herein have  
14 participated as co-conspirators with the defendants in the violations alleged herein and have  
15 performed acts and made statements in furtherance thereof.

#### 16                               V.     CLASS ACTION ALLEGATIONS

17           43.     Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the  
18 Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons  
19 excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who  
20 purchased directly, from one or more of the defendants and/or their co-conspirators title insurance  
21 for residential and commercial property in California during the four year period preceding this  
22 lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number  
23 of potential Class members is so numerous that joinder is impracticable.

24           44.     Plaintiff, as representative of the Class, will fairly and adequately protect the interest  
25 of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those  
26 of the Class members.

27           45.     Except as to the amount of damages each member of the Class has by itself  
28 sustained, all other questions of fact and law are common to the Class, including but not limited to,

1 the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act  
2 (15 U.S.C. § 1) and the effects of such violation.

3 46. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a  
4 result of paying supracompetitive prices for title insurance in California. These supracompetitive  
5 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation  
6 and division.

7 47. Members of the Class include hundreds of thousands, if not millions, of consumers.  
8 They are so numerous that their joinder would be impracticable.

9 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal  
10 Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule  
11 (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with  
12 injury by the anticompetitive conduct detailed herein.

13 49. Defendants have acted, continued to act, refused to act and continued to refuse to act  
14 on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final  
15 injunctive relief with respect to the Rule (b)(2) Class as a whole.

16 50. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of  
17 consumers. They are so numerous that their joinder would be impracticable.

18 51. Common questions of law and fact exist with respect to all Class members and  
19 predominate over any questions solely affecting individual Class members. Among the questions  
20 of law or fact common to the class are the following:

- 21 • Whether defendants have engaged in the alleged illegal price-fixing activity  
22 and market allocation and division.
- 23 • The duration and scope of defendants' alleged illegal price-fixing and market  
24 allocation and division activity.
- 25 • Whether defendants' alleged illegal price-fixing and market allocation and  
26 division has caused higher prices to plaintiffs and other purchasers of title  
27 insurance in California.
- 28 • Whether the Insurance Commissioner has actively supervised defendants'  
price fixing and market allocation and division.



52. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's claims are typical of the claims of the Class and they will fairly and adequately reflect the interests of the Class. Counsel competent and experienced in federal class action and federal antitrust litigation has been retained to represent the Class.

53. This action is superior to any other method for the fair and efficient adjudication of this legal dispute since joinder of all members is not only impracticable, but impossible. The damages suffered by certain members of the Class are small in relation to the expense and burden of individual litigation and therefore it is highly impractical for such Class members to seek redress for damages resulting from defendants' anticompetitive conduct.

54. There will be no extraordinary difficulty in the management of the Class action.

## **VI. TRADE AND COMMERCE**

55. During all or part of the period in suit, defendants and their co-conspirators were sellers of title insurance in California.

56. During the period in suit, the defendants sold substantial quantities of title insurance in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United States paid \$17 billion for residential title insurance policies.

57. During the period in suit, Class members from locations outside California purchased commercial or residential property and title insurance within California.

58. During the period in suit, the defendants were the major sellers of title insurance in the United States and California. Defendants controlled in excess of 85 percent of the market for title insurance in the United States and California.

59. The activities of the defendants and their co-conspirators, as described herein, were within the flow of interstate commerce and substantially affected interstate commerce.

## **VII. FACTUAL ALLEGATIONS**

### **A. The Nature of Title Insurance**

60. Title insurance is one of most costly items associated with the closing of a real estate transaction. In California, rates for title insurance are based on a percentage of the total value of the property being insured. For residential properties, this price ranged in 2005 from

1 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more  
2 expensive homes and commercial properties, these prices are significantly higher. This amount  
3 spent on title insurance has risen dramatically over the past decade.

4 61. Title insurance serves an important purpose. It protects the purchaser of a property  
5 from any unidentified defects in the title that would in any way interfere with the full and complete  
6 ownership and use of the property with the ultimate right to resell the property. Title insurance is  
7 required by lenders in most residential and commercial real estate transactions.

8 62. Consumers exercise little discretion in choosing the title insurer from which they  
9 purchase the insurance. That decision is typically made for them by their lawyer, mortgage broker,  
10 lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not challenged.  
11 Most consumers do not even become aware of the price they will pay and to which insurer they  
12 will pay it until the actual closing of the real estate transaction. By then it's too late, consumers  
13 can't attempt to negotiate a better title insurance price or alternate provider for fear of delaying or  
14 derailing the entire transaction. There is no shopping around. There is no negotiation of price.

15 63. This dynamic basically removes the sale of title insurance from the normal  
16 competitive process. Unlike the regular forces of supply and demand that keep most industries and  
17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.  
18 The purchasers of the insurance, in most instances, are not the ones making the purchasing  
19 decisions. And, they are certainly in no position to question the price.

20 64. The most effective but illegal way for a particular title insurer to get business is to  
21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to  
22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are  
23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business  
24 services and other financial enticements. Therefore, it is through higher pricing (which allows for  
25 generous inducements and kick-backs), not lower pricing, that provides the best way for title  
26 insurers to compete and increase their business.

**B. Price-Fixing in the Large Markets**

65. New York is one of several states in which the leading title insurers collectively fix their prices through a rate-setting organization like TIRSA. There are two principal cost components that go into TIRSA's calculation. One comprises the risk associated with issuing the title policy. The other comprises the "agency commissions" paid to title agents.

66. The risk component covers the risk the title insurer bears for any undiscovered defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of loss to the insurer. That is because title insurance protects against unknown *prior* events that cause defects in title. With a proper search and examination of prior ownership records, any such defects can and almost always are readily identified and excluded from the policy's coverage.

Consequently, the average claim payout on a title insurance policy in the United States amounts to only about 5 percent of the total premium collected. This is very different from property coverage (such as auto and home insurance) – which protects against *future* occurrences over which the insurer has little to no control – where the average claim payout amounts to about 80 percent of the total premium.

67. The "agency commissions" component of the title insurance rate covers payments made to title agents. Defendants have an ownership or management stake in many of the title agencies to which these payments are made. A small portion of these payments is for the search and exam of prior ownership records of the property being purchased to identify any liens, encumbrances, burdens, exclusions, or other defects in the title. The search and exam function does not involve the spreading or underwriting of risk, and title insurers typically outsource this task to title agents.

68. The remainder, and by far the bulk, of the agency commissions are comprised of costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These payments have nothing to do with the issuance of title insurance and are made by title insurers merely to inflate their revenues and steer business their way.

1           69. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title  
2 insurance premium is based on the so-called "costs" associated with the payment of agency  
3 commissions. Only 15 percent is based on costs associated with the risk of loss.

4           70. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate  
5 Manual. These rates are tied to the value of the property being insured. This is so despite the fact  
6 that the costs associated with agency commissions are entirely unrelated to the value of the  
7 property. Indeed, agency kickbacks and enticements have little to do with producing a particular  
8 title policy and provide no value – proportional to property value or otherwise – to the consumer.  
9 Even search and exam costs are unrelated to property value. They instead depend on the age of the  
10 property, the complexity of the ownership history, and the accessibility of prior ownership records.

11           71. There are other states in which the defendants overly meet and agree to fix the rates  
12 for title insurance as part of a formal collective rate setting process.

13       **C. TIRSA's Formation**

14           72. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as  
15 the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate  
16 setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal  
17 Trade Commission ("FTC") challenge to the collective rate setting activity of many of these  
18 associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992),  
19 where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting  
20 activity of these rating bureaus must be actively supervised by the state.

21           73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC  
22 contended that the respective state insurance departments merely rubber-stamped this portion of the  
23 collectively fixed rates without any independent review or analysis of their reasonableness or cost  
24 justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was  
25 not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to  
26 "exercise[] sufficient independent judgment and control so that the details of the rates or prices have  
27 been established as a product of deliberate state intervention, not simply by agreement among  
28 private parties." *Ticor*, 504 U.S. at 634-35.

74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the collective rate-setting of certain state rating bureaus was improper because it was not actively supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed us that a state's rubber stamp is not enough. Active supervision requires the state regulatory authorities' independent review and approval." *Id.* at 1139.

75. Defendants formulated TIRSA's first rate manual and procedure soon after the Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a single rate that comprises both risk and agency commission costs and by outsourcing to title agents the agency commission costs. In this way, defendants avoid providing the Insurance Department with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed rates.

76. TIRSA merely submits an aggregated figure that is supposed to represent the total agency commission costs. Embedded within this figure is the vast quantity of dollars that are funneled to and through the title agencies as kickbacks, financial inducements and other costs unrelated to the issuance of title insurance. Defendants' design in all of this has been to effectively "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from the regulatory scrutiny that *Ticor* demands.

**D. Lack of Regulatory Supervision and Authority in New York and Other States Including California**

77. There is no provision under the New York Insurance Law for TIRSA to include in its collectively fixed rates kickbacks and other agency commission payments unrelated to the issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged that it lacks the authority to review any agency commission payments. It has likewise recognized that defendants' outsourcing of agency commission costs has prevented it from performing a meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public hearing the New York Insurance Department held – the first in 15 years – where it questioned



1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup  
2 or detail for agency commissions.

3 78. At the hearing, the Insurance Department conceded that it could not properly  
4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost  
5 information on agency commissions that TIRSA does not provide.

6 79. The Insurance Department's recognition that it is not properly supervising TIRSA's  
7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
8 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
9 regulation. The GAO studied the industry conditions of several states, including New York, and  
10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*  
11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 80. Unchecked by regulatory review and insulated from competition, defendants have  
13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits  
14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a  
15 free and open competitive market.

16 81. At the time of TIRSA's formation, the Insurance Department established 5 percent  
17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance  
18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its  
19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a  
20 reasonable premium. However, without the authority or ability to scrutinize agency commission  
21 costs, the Insurance Department has been unable to perform this function. As a result, defendants  
22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in  
23 excess of the 5 percent threshold.

24 82. Through an independent investigation conducted over the past several years, the  
25 New York State Attorney General found that for every dollar of insurance premium defendants  
26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid  
27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only  
28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.

1 These numbers show that title insurers' collectively fixed rates have resulted in profits that  
2 untethered to and vastly exceed the costs of producing such policies.

3 83. The New York Attorney General's investigation further revealed that what was  
4 largely driving these numbers were the kickbacks and other financial inducements defendants were  
5 funneling to and through title agents to secure more business. As reported at the New York  
6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent  
7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",  
8 "automobile expenses", "political contributions", "promotional expenses", and "travel and  
9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 84. The Washington State Insurance Commissioner's October 2006 report found  
11 strikingly similarly abuses in Washington. Violations were pervasive and the Commissioner  
12 concluded that consumers were paying too much as a result.

13 85. All of this "excess money" paid to title agents not only works to steer business to  
14 defendants. It also serves to boost defendants' own profits through the inflated revenues they  
15 obtain to cover these agency payments and through their ownership or management stake in many  
16 of these agencies.

17 86. Defendants are competitors in the sale of title insurance to consumers throughout  
18 the United States. These title insurers have agreed and engaged in concerted efforts to  
19 (i) collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in  
20 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,  
21 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed  
22 "costs" from regulatory scrutiny by funneling them to and through title agents over which the  
23 government agencies have no ability or authority to regulate.

24 87. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of the  
25 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of  
26 competition and questions about the reasonableness of prices including:  
27  
28

- Consumers find it difficult to shop for title insurance, therefore, they put little pressure on insurers and agents to compete based on price;
- Title agents do not market to consumers, who pay for title insurance, but to those in the position to refer consumers to particular title agents, thus creating potential conflicts of interest;
- A number of recent investigations by HUD and state regulatory officials have identified instances of alleged illegal activities with the title industry that appear to reduce price competition and could indicate excessive prices;
- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
- In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

88. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to oversee title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws. In part, this situation has resulted from a lack of resources and limited coordination among different regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary penalty, and alternative title insurance models. [*Id.* at 41, footnotes omitted.]

**E. Competition Based on Kickbacks and Inducements But Not Rates**

89. Having agreed to fix or stabilize prices in New York and other states where they overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

90. In other words, as a direct result of these meetings where rates were agreed to, these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well. To compete on rates in other states could and would imperil their ability to maintain the agreed rate in states like New York.

91. As is the case in New York, a lack of regulatory authority over rates created an environment in which a conspiracy can and did succeed. No agency was examining why all the rates were virtually identical, and no agency was examining whether the costs associated with these premiums were reasonable. This is an environment which is conducive to price fixing.

92. In California, there is a lack of regulatory authority and oversight over title insurance companies. The rates in California are not set as part of a deliberate state intervention and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in this case went into effect without review.

**F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive Rate Setting**

93. In addition to the uniformity of rates, other facts suggest that it is more plausible than not that rates have been set based on an agreement to fix prices.

94. In theory, the chain of title should be documented back to its historic grant of ownership centuries in the past. Fear about a possible title defect in the distant past is widely used as a justification by title agencies when convincing property buyers to purchase an owner policy in addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however, saves much time and money when the search is limited to one or two transactions. They rely on the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance company's legal department, the expected cost of compensation is likely to be less than the sum of added overhead costs of routinely tracing back every chain of title to the earliest registered owner in the distant past.

1           95. Title insurance industry officials tend to justify the large proportion of the premium  
2 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the  
3 alleged high cost of title searching back into the distant past. In fact, a high proportion of  
4 noncommercial properties are searched only through the most recent transaction. No information  
5 is available as to what proportion of claims originate in the distant past. The industry has never  
6 published pertinent statistics. It would have a marketing incentive to publish these statistics if the  
7 risk were significant; that it has not published these statistics indicates that the risk probably is only  
8 slightly greater than zero.

9           96. Many U.S. homes are being resold three or four times in twenty-five years. At each  
10 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough  
11 review of the available title records, inheritance records, family records and records of past or  
12 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect  
13 will decrease every time a property is sold.

14           97. Title searches have become less labor intensive, especially in large urban counties  
15 and cities. More and more of the information is available online. The statistical likelihood that a  
16 title default would be overlooked is a closely held industry secret, but it appears to be so small that  
17 many transactions are now insured on the basis of a search of the last owner's title history or a  
18 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence  
19 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.

20           98. Thus the costs of production have decreased as has the risk of loss yet none of these  
21 factors has resulted in price competition at the consumer level.

22           99. There is a remarkable absence of rate changes by title insurers over the past five  
23 years, despite declining costs of production, increased number of transactions and increased  
24 revenue per transaction. During a period when costs per unit of production declined significantly,  
25 underwritten title companies and title insurers maintained excessive rates. The prices charged by  
26 title insurers and underwritten title companies were not and are not responsive to the changing  
27 costs of production or increasing revenue per transaction at a given set of rates. Again, this is  
28 indicia of an agreement not to compete based on price.



1           100. As noted, the title companies engage in illegal rebates and kickbacks where the title  
2 insurer or the underwritten title company provides money, free services or other things of value to  
3 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates  
4 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra  
5 competitive and that some portion of the overcharge is passed from the underwritten title company  
6 or title insurer to the referrer of business.

7           101. A lack of competition and the ability to control prices is enhanced by the fact that  
8 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
9 title insurer groups declined as title insurers acquired other title insurers. There were few  
10 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled  
11 business arrangements whose addition to the market did not result in greater price competition.

12           102. Access to title plants can be a barrier to entry, but a large barrier to entry exists due  
13 to the established relationships between the entities that can steer the consumer's title and escrow  
14 business and the entities who sell title insurance and escrow services.

15           103. The title insurance market is highly concentrated – a few title insurers account for  
16 the vast majority of title insurance sales – at both the statewide level and at the county level in  
17 California. For example, three title insurer groups account for 77.4% of the market at a statewide  
18 level. At the county level, each individual market was highly concentrated. The GAO found that  
19 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the  
20 ability of companies to fix prices

21           104. The agreement not to compete based on price is also evidenced by the fact that no  
22 company has marketed its services to consumers, the ultimate purchasers of the product. This is in  
23 marked contrast to real insurance, for example, car insurance, where the companies compete  
24 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or  
25 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

**VIII. CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the Sherman Act**

105. Plaintiff incorporates by reference the preceding allegations.

106. Beginning at least as early as February 2004, and continuing thereafter to the present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act.

107. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance throughout California;

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and

(c) to allocate and divide the market for title insurance in California.

108. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a *per se* violation of Section I of the Sherman Act.

109. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

110. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supra competitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

111. The aforesaid combination and conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;

(b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

112. During the period of the antitrust violations by defendants and their co-conspirators, plaintiff and each member of the Class she represents, has purchased title insurance and, by reason of the antitrust violations herein alleged, paid more for such that it would have paid in the absence of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has been injured and damaged in an amount presently undetermined.

## COUNT II

### **Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.***

113. Plaintiff incorporates by reference the preceding allegations.

114. Defendants conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

## COUNT III

### **(California's Business & Professions Code §§ 17200, *et seq.*)**

116. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

117. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.

118. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

119. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than she would or should have absent the conduct complained of.

120. Plaintiff requests that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

## COUNT IV

## UNJUST ENRICHMENT

121. Plaintiff incorporates by reference the preceding allegations.

122. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

123. Defendant has received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

124. Defendants are aware of their receipt of the above-described benefit.

125. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

126. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

127. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution

1 of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or  
2 wrongful conduct alleged above.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff demands:

5 A. That the alleged combination and conspiracy among the defendants and their  
6 co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of  
7 Section 1 of the Sherman Act;

8 B. That the Court declare that the premiums charged are excessive under state law and  
9 order damages;

10 C. That judgment be entered against defendants, jointly and severally, and in favor of  
11 plaintiff, and each member of the Class it represents, for threefold the damages determined to have  
12 been sustained by plaintiff, and each member of the Class it represents, together with the cost of  
13 suit, including a reasonable attorneys' fee;

14 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their  
15 respective officers, directors, agents and employees, and all other persons acting or claiming to act  
16 on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any  
17 manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination,  
18 conspiracy, agreement, understanding or concert of action, adopting or following any practice,  
19 plan, program, or design having a similar purpose or effect in restraining competition; and

20 E. Such other and further relief as may appear necessary and appropriate.

21 **JURY TRIAL DEMANDED**

22 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

23 DATED: March 11, 2008.

24 HAGENS BERMAN SOBOL SHAPIRO LLP

25  
26 By  \_\_\_\_\_

27 JEFF D. FRIEDMAN (173886)  
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# **EXHIBIT 3**

E-filing

ORIGINAL  
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APR 11 2008  
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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LISA BLACKWELL, on Behalf of herself  
and All Others Similarly Situated,

Plaintiff,

vs.

No.

**C08-01928**

CIVIL - CLASS ACTION

JURY TRIAL DEMANDED

FIDELITY NATIONAL FINANCIAL,  
INC., FIDELITY NATIONAL TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY OF FLORIDA,  
CHICAGO TITLE INSURANCE  
COMPANY, NATIONAL TITLE  
INSURANCE OF NEW YORK, INC.,  
SECURITY UNION TITLE INSURANCE  
COMPANY, THE FIRST AMERICAN  
CORPORATION, FIRST AMERICAN  
TITLE INSURANCE COMPANY,  
UNITED GENERAL TITLE INSURANCE  
COMPANY, LANDAMERICA  
FINANCIAL GROUP, INC.,  
COMMONWEALTH LAND TITLE  
INSURANCE COMPANY, LAWYERS  
TITLE INSURANCE CORPORATION,  
TRANSNATION TITLE INSURANCE  
COMPANY, STEWART TITLE  
GUARANTY COMPANY and STEWART  
TITLE INSURANCE COMPANY

COMPLAINT

1 Defendants

2 Plaintiff Lisa Blackwell, by her attorneys, on behalf of herself and all others similarly  
3 situated brings this action for treble damages and injunctive relief under the antitrust laws of the  
4 United States and based on statutes of the State of California against the above-named  
5 defendants, demand a trial by jury, and complaining and alleging as follows:

6 **I. INTRODUCTION**

7 1. From the consumer's point of view, title insurance differs greatly from other, more  
8 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies  
9 protect consumers from an event that may occur in the future, title insurance offers protection  
10 from events that might have occurred in the past.

11 2. Most simply, title insurance is protection purchased against a loss arising from  
12 problems that occurred in the past and may affect the title to the real estate that a consumer is  
13 buying. Title insurers do not compete on the basis of the policies or coverage that they provide.  
14 In fact, almost all title policies are based on a single set of form policies published and  
15 maintained by the national trade association, the American Land Title Association. Furthermore,  
16 the end goal of an exhaustive title search by a title insurer is not to provide coverage for title  
17 defects that the search uncovers, but rather to exclude coverage for any such defects and  
18 therefore, further reduce the real value of the title policy which is written to cover only unknown  
19 defects in title at the time of issuance. As a result, title insurance is a commodity product.

20 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
21 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
22 paperwork and signings that culminate in the closing of a home purchase. Consumers, who  
23 normally show around for their insurance and carefully compare prices, typically emerge from  
24 the closing on their new home holding an insurance policy that they know virtually nothing about  
25 and that in all likelihood, they will never need.

26 4. The title insurance market in California consists of a dozen carriers, ranging in  
27 size from regional companies to national affiliates. However, the market is dominated by four  
28 groups of affiliated companies which, combined, sell over 90 percent of the title insurance

1 policies sold in California and which own and control the title plants in many California counties  
2 that every title insurer must rely on in order to issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other traditional  
4 insurance carriers, choose not to market their products directly to the consumers who pay for  
5 them. Instead, the title insurance industry operates on what is termed a "reverse competition"  
6 model. Reverse competition means that title companies solicit business referrals from the other  
7 major players in the home purchase scenario - real estate agents and agencies, banks, lenders,  
8 builders, developers and others: middlemen or go-betweens. The title companies pay middlemen  
9 for these referrals in the form of direct payments, advertising expenses, junkets, parties and other  
10 kick-backs and inducements. In addition, middlemen such as Windermere, John L. Scott and  
11 Caldwell Bank-Bain, who themselves control a significant portion of the real estate brokerage  
12 market, take significant ownership stakes in local title agents and affiliates of the major title  
13 insurers and thereby get a direct return in profit from the referral of title business to the title agent  
14 whom the partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets "winning and dining" real estate agents, banks, lenders,  
18 builders, developers and others in an effort to convince these middlemen to steer their home-  
19 buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review of regulation. The companies  
23 agree to fix the price of title insurance far in excess of the risk and loss experience associated  
24 with such insurance. As a result of the joint agreement as to rates, competition is relegated to the  
25 middleman. As a result of their joint rate setting and agreement, no company competes on price  
26 to the consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the companies  
28 agreed to not compete based on price to the consumer in other states, including California, where



1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive  
2 prices and to compete based on offering inducements to middlemen. In California, in three  
3 successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing  
4 number" of such inducements that are in violation of state law. However, the OIC does not  
5 actively oversee or regulate rates, and, in fact, does not buy its own admission have the power to  
6 do so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant  
10 ownership in favored title insurance affiliates. The real estate brokers then reward their  
11 associates for using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a class of those purchasing title insurance in  
13 California seek damages arising from defendants' violations of the Sherman Act as well as  
14 California statutory law.

## 15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Section 4 and  
17 16 of the Act of Congress of October 15, 1914 C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to  
18 obtain injunctive relief and to recover treble damages and the costs of suit, including a reasonable  
19 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the  
20 Class which she represents by reason of defendants' and their co-conspirators' violations, as  
21 hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Northern  
23 District of California. The interstate commerce described hereinafter is carried on, in part, within  
24 the Northern District of California and the conspiratorial acts herein alleged were carried on, in  
25 part, in the Northern District of California.

26 13. Intra-district Assignment: Assignment to the San Francisco or Oakland division  
27 of this court is appropriate because a substantial part of the events or omission which give rise to  
28

1 the claim occurred in the county of San Francisco. Pursuant to Northern District of California,  
2 Local Rule 3-2(d), assignment to either the San Francisco Division or the Oakland Division is  
3 proper.

4 **III. PARTIES**

5 14. Plaintiff Lisa Blackwell, is an individual residing in San Francisco County,  
6 California. During the class period, plaintiff purchased title insurance directly from one or more  
7 of the defendants herein and has been injured by reason of the antitrust violations alleged.

8 15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware  
9 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity  
10 National does business in California through one or more of its subsidiaries, including but not  
11 limited to defendants Fidelity National Title Insurance Company, Ticor Title Insurance  
12 Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York,  
13 Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity  
14 National is registered to do business in California.

15 16. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California  
16 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
17 32204. FNTIC does business in California, is a licensed title insurance company in California  
18 and is registered to do business in California.

19 17. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation  
20 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor  
21 does business in California, is a licensed title insurance company in California and is registered to  
22 do business in California.

23 18. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida  
24 corporation with its principle place of business 601 Riverside Ave., Jacksonville, Florida 32204.  
25 TTICF does business in California, is a licensed title insurance company in California and is  
26 registered to do business in California.

27 19. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri  
28 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida

1 32204. Chicago Title does business in California, is a licensed title insurance company in  
2 California and is registered to do business in California.

3 20. Defendant National Title Insurance of New York, Inc. ("NYINY") is a New York  
4 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
5 32204. NYINY does business in California, is a licensed title insurance company in California  
6 and is registered to do business in California.

7 21. Defendant Security Union Title Insurance Company Chicago Title Insurance  
8 Company ("Chicago Title") is a Missouri Corporation with its principle place of business at 601  
9 Riverside Ave., Jacksonville, Florida 32204. Chicago Title does business in California, is a  
10 licensed title insurance company in California and is registered to do business in California.

11 22. The Fidelity family of title insurance companies (collectively, "Fidelity") - which  
12 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NYINY and SUTIC,  
13 and their affiliates - in engaged in selling title insurance to purchases of commercial and  
14 residential real estate throughout the United States, including California. Nationally, Fidelity  
15 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly  
16 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined  
17 below) and since TIRSA's inception have charged title insurance rates in New York that TIRSA  
18 collectively sets.

19 23. The Fidelity family of title insurance companies and their affiliates are wholly-  
20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
21 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of  
23 title insurance companies engaged in the conduct challenged herein with the approval and assent  
24 of defendant Fidelity National.

25 24. Defendant The First American Corporation ("First American") is a California  
26 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First  
27 American does business in California through one or more its subsidiaries, including but not  
28 limited to, defendant First American Title Insurance Company and United General Title

1 Insurance Company.

2 25. Defendant First American Title Insurance Company ("FATIC") is a California  
3 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC  
4 does business in California is a licensed title insurance company in California and is registered to  
5 do business in California.

6 26. Defendant United General Title Insurance Company ("UGTIC") is a Colorado  
7 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does  
8 business in California, is a licensed title insurance company in California and is registered to do  
9 business in California.

10 27. The First American family of title insurance companies (collectively, "First  
11 American") - which includes defendants First American, FATIC and UGTIC, and their affiliates  
12 - is engaged in selling title insurance to purchasers of commercial and residential real estate  
13 throughout the United States, including California. Nationally, First American accounts for  
14 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion.  
15 First American Title was a founding member of TIRSA and since TIRSA's inception has charged  
16 title insurance rates in New York that TIRSA collectively sets.

17 28. The First American family of title insurance companies and their affiliates are  
18 wholly-owned and controlled by defendant The First American Corporation. Through its  
19 subsidiaries, First American is a provider of title insurance, business information, and related  
20 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
21 American family of title insurance companies and their affiliates engaged in the conduct  
22 challenged herein with the approval and assent of defendant First American.

23 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
24 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
25 business in California through one or more of its subsidiaries, including but not limited to,  
26 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation  
27 and Trans-nation Title Insurance Company.

28 30. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a

1 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,  
2 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
3 California and registered to do business in California.

4 31. Defendants Lawyers Title Insurance Corporation ("LTIC") is a Nebraska  
5 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
6 LTIC does business in California, is a licensed title insurance company in California and is  
7 registered to do business in California.

8 32. Defendants Trans-nation Title Insurance Corporation ("TNTIC") is a Nebraska  
9 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
10 TNTIC does business in California, is a licensed title insurance company in California and is  
11 registered to do business in California.

12 33. The LandAmerica family of title insurance companies (collectively,  
13 "LandAmerica") - which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their  
14 affiliates - is engaged in selling title insurance to purchasers of commercial and residential real  
15 estate throughout the United States, including California. Nationally, LandAmerica accounts for  
16 approximately 19 percent of title premiums, which in 2006 amount to roughly \$3.15 billion.  
17 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's  
18 inception have charged title insurance rates in New York that TIRSA collectively sets.

19 34. The LandAmerica family of title insurance companies and their affiliates are  
20 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its  
21 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
22 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
23 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title  
24 insurance companies and their affiliates engaged in the conduct challenged herein with the  
25 approval of defendant LandAmerica.

26 35. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation  
27 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in  
28 California, is a licensed title insurance company in California and is registered to do business in



1 California.

2 36. Defendant Stewart Title Insurance Company ("STIC") is a New York corporation  
3 with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY 10017. STIC  
4 does business in California, is a licensed title insurance company in California and is registered to  
5 do business in California.

6 37. The Stewart family of title insurance companies (collectively, "Stewart") - which  
7 includes defendants STGC and STIC, and its affiliates - is engaged in selling title insurance to  
8 purchasers of commercial and residential real estate throughout the United States and California.  
9 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006  
10 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's  
11 inception has charged title insurance rates in New York that TIRSA collectively sets.

12 38. Together, defendants account for more than 85 percent of title premiums  
13 consumers pay in California. Nationally, they account for more than 85 percent of title  
14 premiums, which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages  
15 period, defendants charged California consumers in California virtually identical title insurance  
16 rates.

#### 17 IV. OTHER ENTITIES

18 39. TIRSA is a voluntary association of title insurers licensed as a rate service  
19 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains  
20 its offices in New York City, which until recently were located at the same New York address of  
21 Fidelity Title.

22 40. TIRSA annually compiles from its members statistical data relating to their title  
23 insurance premiums, losses and expenses and submits this information in aggregate form to the  
24 New York Insurance Department. TIRSA also prepares and submits the New York Title  
25 Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by  
26 TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has  
27 collectively set. Similarly, the California OIC has not actually held a public hearing or conducted  
28 any other review or regulation of the title insurance rates in California for thirty years.

1           41.     TIRSA's membership is comprised of defendant insurers and all other title  
2 insurers that are licensed to issue policies in New York. Currently, Fidelity, First American,  
3 LandAmerica and Stewart collectively represent 14 of TIRSA's 22 members. As such, they  
4 comprise a majority voting block which, according to TIRSA's by-laws, allows them to control  
5 the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

6           42.     Various other persons, firms and corporations not made defendants herein have  
7 participated as co-conspirators with the defendants in the violations alleged herein and have  
8 performed acts and made statements in furtherance thereof.

9                               **V.    CLASS ACTION ALLEGATIONS**

10          43.     Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the  
11 Federal Rules of Civil Procedure, on behalf of herself and a class consisting of all persons  
12 excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who  
13 purchased directly, from one or more of the defendants and/or their co-conspirators title  
14 insurance for residential and commercial property in California during the four year period  
15 preceding this lawsuit and who have sustained damages as a result of the conspiracy herein  
16 alleged. The number of potential class members is so numerous that joinder is impracticable.

17          44.     Plaintiff, as representative of the class, will fairly and adequately protect the  
18 interest of the class members. The interests of plaintiff are coincident with, and not antagonistic  
19 to, those of the class members.

20          45.     Except as to the amount of damages each member of the class has by itself  
21 sustained, all other questions of fact and law are common to the class, including but not limited  
22 to, the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman  
23 Act (15 U.S.C. §1) and the effects of such violation.

24          46.     Plaintiff, along with all other members of the Rule (b) (3) class, were injured as a  
25 result of paying supra-competitive prices for title insurance in California. The supra-competitive  
26 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation  
27 and division.

28          47.     Members of the class include hundreds of thousands, if not millions, of

1 consumers. They are so numerous that their joinder would be impracticable.

2 48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal  
3 Rules of Civil Procedure, for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule  
4 (b) (2) class includes all members of the (b) (3) class, and all consumers who are threatened with  
5 injury by the anticompetitive conduct detailed herein.

6 49. Defendants have acted, continued to act, refused to act and continued to refuse to  
7 act on grounds generally applicable to Rule (b) (2) class, thereby making appropriate final  
8 injunctive relief with respect to the Rule (b) (2) class as a whole.

9 50. Members of the Rule (b) (2) class include hundreds of thousands, if not millions,  
10 of consumers. They are so numerous that their joinder would be impracticable.

11 51. Common questions of law and fact exist with respect to all class members and  
12 predominate over any questions solely affecting individual class members. Among the questions  
13 of law of fact common to the class are the following:

- 14 • Whether defendants have engaged in the alleged illegal price-fixing activity and  
15 market allocation and division.
- 16 • The duration and scope of defendants' alleged illegal price-fixing and market  
17 allocation and division activity.
- 18 • Whether defendants' alleged illegal price-fixing and market allocation and  
19 division has caused higher prices to plaintiffs and other purchasers of title  
20 insurance in California.
- 21 • Whether the Insurance Commissioner has actively supervised defendants' price  
22 fixing and market allocation and division.

23 52. Plaintiff does not have any conflict of interest with other class members.  
24 Plaintiff's claims are typical of the claims of the class and they will fairly and adequately reflect  
25 the interests of the class. Counsel competent and experienced in federal class action and federal  
26 antitrust litigation has been retained to represent the class.

27  
28 53. This action is superior to any other method for the fair and efficient adjudication

1 of this legal dispute since joinder of all members is not only impracticable, but impossible. The  
2 damages suffered by certain members of the class are small in relation to the expense and burden  
3 of individual litigation and therefore it is highly impractical for such class members to seek  
4 redress for damages resulting from defendants' anticompetitive conduct.

5  
6 54. There will be no extraordinary difficulty in the management of the class action.

7  
8 **VI. TRADE AND COMMERCE**

9 55. During all or part of the period in suit, defendants and their co-conspirators were  
10 sellers of title insurance in California.

11 56. During the period in suit, the defendants sold substantial quantities of title  
12 insurance in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in  
13 the United States paid \$17 billion for residential title insurance policies.

14 57. During the period in suit, class members from locations outside California  
15 purchased commercial or residential property and title insurance within California.

16 58. During the period in suit, the defendants were the major sellers of title insurance  
17 in the United States and California. Defendants controlled in excess of 85 percent of the market  
18 for title insurance in the United States and California.

19 59. The activities of the defendants and their co-conspirators, as described herein,  
20 were within the flow of interstate commerce and substantially affected interstate commerce.

21 **VII. FACTUAL ALLEGATIONS**

22 **A. The Nature of Title Insurance**

23 60. Title insurance is one of most costly items associated with the closing of real  
24 estate transaction. In California, rates for title insurance are based on a percentage of the total  
25 value of the property being insured. For residential properties, this price ranged in 2005 from  
26 about \$1,010 (for a \$250,000.00 property) to \$1,490 (for a \$500,000.00 property). For more  
27 expensive homes and commercial properties, these prices are significantly higher. This amount  
28 spent on title insurance has risen dramatically over the past decade.

1           61. Title insurance serves an important purpose. It protects the purchaser of a  
2 property from any unidentified defects in the title that would in any way interfere with the full  
3 and complete ownership and use of the property with the ultimate right to resell the property.  
4 Title insurance is required by lenders in most residential and commercial real estate transactions.

5           62. Consumers exercise little discretion in choosing the title insurer from which they  
6 purchase the insurance. That decision is typically made for them by their lawyer, mortgage  
7 broker, lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not  
8 challenged. Most consumers do not even become aware of the price they will pay and to which  
9 insurer they will pay it until the actual closing of the real estate transaction. By then its too late,  
10 consumers can't attempt to negotiate a better title insurance price or alternate provider for fear of  
11 delaying or derailing the entire transaction. There is no shopping around. There is no negotiation  
12 of price.

13           63. This dynamic basically removes the sale of title insurance from the normal  
14 competitive process. Unlike the regular forces of supply and demand that keep most industries  
15 and their pricing in check, the title insurance industry is not subject to any real competitive  
16 constraints. The purchasers of the insurance, in most instances, are not the ones making the  
17 purchasing decisions. And, they are certainly in no position to question the price.

18           64. The most effective but illegal way for a particular title insurer to get business is to  
19 encourage those making the purchasing decisions - the real-estate middlemen - to steer business  
20 to that insurer. The best way to so motivate the middlemen is not through lower prices (that they  
21 are not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals,  
22 business services and other financial enticements. Therefore, it is through higher pricing (which  
23 allows for generous inducements and kick-backs), not lower pricing, which provides the best way  
24 for title insurers to compete and increase their business.

25           **B. Price-Fixing in the Large Markets**

26           65. New York is one of several states in which the leading title insurers collectively  
27 fix their prices through a rate-setting organization like TIRSA. There are two principal cost  
28 components that go into TIRSA's calculation. One comprises the risk associated with issuing the



1 title policy. The other comprises the “agency commissions” paid to title agents.

2 66. The risk components cover the risk the title insurer bears for any undiscovered  
3 defects in the title. Unlike property insurance, title insurance carriers with it a very limited risk  
4 of loss to the insurer. That is because title insurance protects against unknown prior events that  
5 cause defects in title. With a proper search and examination of prior ownership records, any such  
6 defects can and almost always are readily identified and excluded from the policy’s coverage.  
7 Consequently, the average claim on a title insurance policy in the United States amounts to only  
8 about 5 percent of the total premium collected. This is very different from property coverage  
9 (such as auto and home insurance) - which protects against future occurrences over the insurer  
10 has little or no control - where the average claim payout amounts to about 80 percent of the total  
11 premium.

12 67. The “agency commissions” component of the title insurance rate covers payments  
13 made to title agents. Defendants have an ownership or management stake in many of the title  
14 agencies to which these payments are made. A small portion of these payments is for the search  
15 and exam of prior ownership records of the property being purchased to identify any liens,  
16 encumbrances, burdens, exclusions, or other defects in the title. The search and exam function  
17 does not involve the spreading or underwriting of risk, and title insurers typically outsource this  
18 task to title agents.

19 68. The remainder, and by far the bulk, of the agency commission are comprised of  
20 costs unrelated to the issuance of title insurance. These costs include kickbacks and other  
21 financial inducements title insurers provide to title agents and indirectly (through title agents) to  
22 the lawyers, brokers, and lenders who, in realty, are the ones deciding which title insurer to use.  
23 These payments have nothing to do with the issuance of title insurance and are made by title  
24 insurers merely to inflate their revenues and steer business their way.

25 69. Under TIRSA’s collective rate setting regime, roughly 85 percent of the total tile  
26 insurance premium is based on the so-called “costs” associated with the payment of agency  
27 commissions. Only 15 percent is based on costs associated with the risk of loss.

28 70. TIRSA publishes its final calculated title rates in the New York Title Insurance

1 Rate Manual. These rates are tied to the value of the property being insured. This is so despite  
2 the fact that the costs associated with agency commissions are entirely unrelated to the value of  
3 the property. Indeed, agency kickbacks and enticements have little to do with producing a  
4 particular title policy and provide no value - proportional to property value. The instead depend  
5 on the age of the property, the complexity of the ownership history, and the accessibility of prior  
6 ownership records.

7 71. There are other states in which the defendants overly meet and agree to fix the  
8 rates for title insurance as part of a formal collective rate setting process.

9 **C. TIRSA's Formation**

10 72. Prior to TIRSA, the New York Board of Underwriters ("NYBTU") served as the  
11 title insurance rate-setting body in New York. NYBTU, along with the title insurance rate setting  
12 bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal Trade  
13 Commission ("FTC") challenge to the collective rate setting activity of many of these  
14 associations. The FTC's challenge culminated in *FTC v. Ticor Title Inc. Co.*, 504 U.S. 621  
15 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing, the rate setting  
16 activity of these rating bureaus must be actively supervised by the state.

17 73. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC  
18 contended that the respective state insurance departments merely rubber-stamped this portion of  
19 the collectively fixed rates without any independent review or analysis of their reasonableness or  
20 costs justification. The Supreme Court agreed with the FTC that this kind of limited state  
21 oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance  
22 department has to "exercise sufficient independent judgment and control so that the details of the  
23 rates or prices have been established as a product of deliberate state intervention, not simply by  
24 agreement among private parties." *Ticor*, 504 U.S. at 634-35.

25 74. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand  
26 in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the  
27 collective rate-setting of certain state rating bureaus was improper because it was not actively  
28 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed

us that a state's rubber stamp is not enough. Active supervision requires the state regulatory authorities' independent review and approval". *Id.* at 1139.

75. Defendants formulated TIRSA's first rate manual and procedure soon after the Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a single rate that comprises both risk and agency commission costs and by outsourcing to title agents the agency commission costs. In this way, defendants avoid providing the Insurance Department with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed rates.

76. TIRSA merely submits an aggregated figure that is supposed to represent the total agency commission costs. Embedded within this figure is the vast quantity of dollars that are funneled to and through the title agencies as kickbacks, financial inducements and other costs unrelated to the issuance of title insurance. Defendants' design in all of this has been to effectively "hide" the costs basis for their artificially high and collectively fixed title insurance premiums from the regulatory scrutiny that *Ticor* demands.

**D. Lack of Regulatory Supervision and Authority in New York and Other States Including California**

77. There is no provision under the New York Insurance Law for TIRSA to include in its collectively fixed rates kickbacks and other agency commission payments unrelated to the issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged that it lacks the authority to review any agency commission payments. It has likewise recognized that defendants' outsourcing of agency commission costs has prevented it from performing a meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public hearing at New York Insurance Department held - the first in 15 years - where it questioned TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup or detail for agency commissions.

78. At the hearing, the Insurance Department conceded that it could not properly evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed costs

1 information on agency commissions that TIRSA does not provide.

2 79. The Insurance Department's recognition that it is not properly supervising  
3 TIRSA's rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
4 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
5 regulation. The GAO studied the industry conditions of several states, including New York, and  
6 concluded that "state regulators have not collected the type of data, *primarily on title agents'*  
7 *costs and operations*, needed to analyze premium prices and underlying costs." (Emphasis  
8 added.)

9 80. Unchecked by regulatory review and insulated from competition, defendants have  
10 thus been unable to collectively fix title insurance rates at supra competitive levels and ear profits  
11 that vastly exceed those contemplated by the Insurance Department or that would have resulted in  
12 a free and open competitive market.

13 81. At the time of TIRSA's formation, the Insurance Department established 5 percent  
14 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance  
15 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its  
16 revenue and cost formation, to ensure that this 5 percent profit level is maintained and based on a  
17 reasonable premium. However, without the authority or ability to scrutinize agency commission  
18 costs, the Insurance Department has been unable to perform this function. As a result, defendants  
19 (through TIRSA) have been able to set artificially high title premiums and secure title profits far  
20 in excess of the 5 percent threshold.

21 82. Through an independent investigation conducted over the past several years, the  
22 New York State Attorney General found that for every dollar of insurance premium defendants  
23 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is  
24 paid out of claims. And, of the roughly 85 cents that supposedly covers agency commissions,  
25 only between 8 and 11 cents goes to costs actually incurred by title agents in producing the title  
26 policy. These numbers show that title insurers' collectively fixed rates have resulted in profits  
27 that vastly exceed the costs of producing such policies.

28 83. The New York Attorney General's investigation further revealed that what were

1 largely driving these numbers were the kickbacks and other financial inducements defendants  
2 were funneling to and through title agents to secure more business. As reported at the New York  
3 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it  
4 spent more than \$1 million of these so-called "agency commissions" on items identified at  
5 "Christmas", "automobile expenses", "political contributions", "promotional expenses", and  
6 "travel and entertainment". These expenses are not even remotely related to the issuance of title  
7 insurance.

8 84. The Washington State Insurance Commissioner's October 2006 report found  
9 strikingly similarly abuses in Washington. Violations were pervasive and the Commissioner  
10 concluded that consumers were paying too much as a result.

11 85. All of this "excess money" paid to title agents not only works to steer business to  
12 defendants. It also served to boost defendants' own profits through the inflated revenues they  
13 obtain to cover these agency payments and through their ownership or management stake in  
14 many of these agencies.

15 86. Defendants are competitors in the sale of title insurance to consumers throughout  
16 the United States. These title insurers have agreed and engaged in concerted efforts to (i)  
17 collectively set and charge uniform and supra competitive rates for title insurance, (ii) include in  
18 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,  
19 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these  
20 supposed "costs" from regulatory scrutiny by funneling them to and through title agents over  
21 which the government agencies have no ability or authority to regulate.

22 87. The GAO in its 2007 report entitled "actions Needed to Improve Oversight of the  
23 Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of  
24 competitions and questions about the reasonableness of prices including:

- 25 • Consumers find it difficult to shop for title insurance, therefore, they put little  
26 pressure on insurers and agents to compete based on price;
- 27 • Title agents do not market to consumers, who pay for title insurance, but to those  
28 in the position to refer consumers to particular title agents, thus creating potential



1 conflicts of interest;

- 2 • A number of recent investigations by HUD and state regulatory officials have  
3 identified instances of alleged illegal activities with the title industry that appear to  
4 reduce price competition and could indicate excessive prices;
- 5 • As property values or loan amounts increase, prices paid for title insurance by  
6 consumers appear to increase faster than insurers' and agents' costs; and
- 7 • In states where agents' search and examination services are not included in the  
8 premium paid by consumers, it is not clear that additional amounts paid to title  
9 agents are fully supported by underlying costs.

10 88. The GAO visited several states including California, and found a lack of  
11 regulatory oversight:

12 In the states we visited, we found that regulators did not assess title  
13 agents' costs to determine whether they were in line with premium rates; had  
14 made only limited efforts to oversee title agents (including ABAs involving  
15 insurers and agents); and, until recently, had taken few actions against alleged  
16 violations of anti-kickback laws. In part, this situation has resulted from a lack  
17 of resources and limited coordination among different regulators within states.  
18 On the federal level, authority for alleged violations of section 8 of RESPA,  
19 including those involving increasingly complex ABAs, is limited to seeking  
20 injunctive relief. Some state regulators expressed frustration with HUD's level  
21 of responsiveness to their requests for help with enforcement, and some  
22 industry officials said that RESPA rules regarding ABAs and referral fees need  
23 to be clarified. Industry and government stakeholders have proposed several  
24 regulatory changes, including RESPA reform, strengthened regulation of  
25 agents, a competitor right of action with no monetary penalty, and alternative  
26 title insurance models. [*Id.* at 41, footnotes omitted.]

27 **E. Competition Based on Kickbacks and Inducements But Not Rates**

28 89. Having agreed to fix or stabilize prices in New York and other states where they  
overtly meet to promulgate rates, these same defendants then set out to do the same in other  
states.

90. In other words, as a direct result of these meetings where rates were agreed to,  
these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as  
well. To compete on rates in other states could and would imperil their ability to maintain the



1 agreed rate in states like New York.

2 91. As is the case in New York, a lack of regulatory authority over rates created an  
3 environment in which a conspiracy can and did succeed. No agency was examining why all the  
4 rates were virtually identical, and no agency was examining whether the costs associated with  
5 these premiums were reasonable. This is an environment which is conducive to price fixing,

6 92. In California, there is a lack of regulatory authority and oversight over title  
7 insurance companies. The rates in California are not set as part of a deliberate state intervention  
8 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue  
9 in this case went into effect without review.

10 **F. Other Indicators of a Lack of Competition and Conditions Conducive to**  
11 **Collusive Rate Setting**

12 93. In addition to the uniformity of rates, other facts suggest that it is more plausible  
13 than not that rates have been set based on an agreement to fix prices.

14 94. In theory, the chain of title should be documented back to its historic grant of  
15 ownership centuries in the past. Fear about a possible title defect in the distant past is widely  
16 used as a justification by title agencies when convincing property buyers to purchase an owner  
17 policy in addition to the lender policy, which is mandatory to secure a mortgage. The title  
18 agency, however, saves much time and money when the search is limited to one or two  
19 transactions. They rely on the insurance policy to cover the remote chance of missing an earlier  
20 but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance  
21 company's legal department, the expected costs of compensation is likely to be less than the sum  
22 of added overhead costs of routinely tracing back every chain of title to the earliest registered  
23 owner in the distant past.

24 95. Title insurance industry officials tend to justify the large proportion of the  
25 premium retained by the title abstract and settlement agency (from 60 to more than 90 percent)  
26 by the alleged high costs of title searching back into the distant past. In fact, a high proportion of  
27 noncommercial properties are searched only through the most recent transaction. No information  
28 is available as to what proportions of claims originate in the distant past. The industry has never

1 published pertinent statistics. It would have a marketing incentive to publish these statistics if the  
2 risk were significant; that is has not published these statistics indicates that the risk probably is  
3 only slightly greater than zero.

4 96. Many U.S. homes are being resold three or four times in twenty-five years. At  
5 each of these occasions, an abstract of title will be prepared on the basis of a more or less than  
6 thorough review of the available title records, inheritance records, family records and records of  
7 past or current liens against a property. It is reasonable, therefore, to suspect that the risk of a  
8 title defect will decrease every time a property is sold.

9 97. Title searches have become less labor intensive, especially in large urban counties  
10 and cities. More and more of the information is available online. The statistical likelihood that a  
11 title default would be overlooked is a closely held industry secret, but it appears to be so small  
12 that many transactions that occurred during the last twenty-five to thirty-five years. The evidence  
13 is strong that the title insurance industry has achieved a remarkable high level of loss  
14 minimization.

15 98. Thus the costs of production have decreased as has the risk of loss yet none of  
16 these factors has resulted in price competition at the consumer level.

17 99. There is a remarkable absence of rate changes by title insurers over the past five  
18 years, despite the declining costs of production, increased number of transactions and increased  
19 revenue per transaction. During a period when costs per unit of production declined  
20 significantly, underwritten title companies and title insurers maintained excessive rates. The  
21 prices charged by title insurers and underwritten title companies were not and are not responsive  
22 to the changing costs of production or increasing revenue per transaction at a given set of rates.  
23 Again, this is indicia of an agreement not to compete based on price.

24 100. As noted, the title companies engage in illegal rebates and kickbacks where the  
25 title insurer or the underwritten title company provides money, free services or other things of  
26 value to a real estate agent, a lender or homebuilder in exchange for business referrals. These  
27 illegal rebates and kickbacks - a consequence of reverse competition - show that title insurance  
28 rates are supra competitive and that some portion of the overcharge is passed from the

1 underwritten title company or title insurer to the referrer of business.

2 101. A lack of competition and the ability to control prices is enhanced by the fact that  
3 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
4 title insurer groups declined as title insurers acquired other title insurers. There were few  
5 underwritten title company entrants over the 2000 to 2005 period and new entrants were  
6 controlled business arrangements whose addition to the market did not result in greater price  
7 competition.

8 102. Access to title plants can be a barrier to entry, but the large barrier to entry exists  
9 due to the established relationships between the entities that can steer the consumer's title and  
10 escrow business and the entities who sell title insurance and escrow services.

11 103. The title insurance market is highly concentrated - a few title insurers account for  
12 the vast majority of title insurance sales - at both the statewide level and at the county level in  
13 California. For example, three title insurer groups account for 77.4% of the market at a statewide  
14 level. At the county level, each individual market was highly concentrated. The GAO found that  
15 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the  
16 ability of companies to fix prices.

17 104. The agreement not to compete based on price is also evidenced by the fact that no  
18 company has marketed its services to consumers, the ultimate purchasers of the product. This is  
19 in marked contrast to real insurance, for example, car insurance, where companies compete  
20 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor" or  
21 Allstate's "good hands" or the cute (to some) GEICO gecko promising low prices.

## 22 **VIII. CLAIMS FOR RELIEF**

### 23 **COUNT I**

#### 24 **Violation of the Sherman Act**

25 105. Plaintiff incorporates by reference the preceding allegations.

26 106. Beginning at least as early as February 2004, and continuing thereafter to the  
27 present, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged  
28 in a combination of conspiracy in unreasonable restraint of the aforesaid interstate trade and

1 commerce in violation of Section 1 of the Sherman Act.

2 107. The aforesaid combination and conspiracy has consisted of a continuing  
3 agreement, understanding and concert of action among the defendants and their co-conspirators,  
4 the substantial terms of which have been:

5 (a) to fix, raise, maintain and stabilize the price of title insurance throughout  
6 California;

7 (b) to fix, raise, maintain and stabilize the terms and conditions of the sale of  
8 title insurance throughout California; and

9 (c) to allocate and divide the market for title insurance in California.

10 108. In the absence of proper regulatory authority and oversight, defendants' conduct  
11 constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to  
12 allocated and divides the title insurance market in California and is *per se* violation of section I of  
13 the Sherman Act

14 109. Defendants' price-fixing, market allocation and division activity has been  
15 continuous throughout the relevant damages period and has been renewed and reinforced  
16 annually through submissions to the OIC of supposed costs and revenue information and its  
17 periodic submissions of rate changes.

18 110. Through their collective price-fixing, market allocation and division and  
19 manipulation of the regulatory process, defendants have harmed competition by charging  
20 consumers supra competitive prices for title insurance in California, evidenced in part by the fact  
21 that the prices are uniformly higher than compared with the cost of providing the insurance.

22 111. The aforesaid combination and conspiracy has had the following effects among  
23 others:

24 (a) price competition in the sale of title insurance has been suppressed,  
25 restrained and eliminated;

26 (b) prices for title insurance have been raised, fixed, maintained and stabilized  
27 at artificially high and non-competitive levels; and

28 (c) purchasers of title insurance have been deprived of the benefit of free and

1 open competition.

2 112. During the period of the antitrust violation by defendants and their co-  
3 conspirators, plaintiff and each member of the class she represents, has purchased title insurance  
4 and, by reason of the antitrust violations herein alleged, paid more for such that it would have  
5 paid in the absence of said antitrust violations. As a result, plaintiff and each member of the class  
6 she represents, has been injured and damaged in an amount presently undetermined.

7 **COUNT II**

8 **Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.***

9 113. Plaintiff incorporates by reference the preceding allegations.

10 114. Defendants conduct as set forth above is in violation of the Cartwright Act of  
11 California (Cal. Bus. and Prof. Code §§ 16720, *et seq.*)

12 115. As a direct result of defendants' unlawful acts plaintiffs have paid artificially  
13 inflated prices for title insurance and have suffered injury to their business and property.

14 **COUNT III**

15 **(Cal. Bus. and Prof. Code §§ 17200, *et seq.*)**

16 116. The preceding paragraphs of this Complaint are realigned and incorporated by  
17 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§  
18 17200, *et seq.*, on behalf of herself and the members of the class.

19 117. Defendants' statements and representations constitute unfair, unlawful and  
20 deceptive trade practices in violation of the UCL.

21 118. All of the wrongful conduct alleged herein occurs and continues to occur in the  
22 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or  
23 generalized course of conduct that is repeated in the State of California on hundreds, if not  
24 thousands, of occasions daily.

25 119. Plaintiff has suffered injury in fact and has lost money or property as a result of  
26 defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title  
27 insurance than she would or should have absent the conduct complained of.

28 120. Plaintiff requests that this court enter such orders or judgment as may be necessary



1 to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to  
2 restore to any person in interest any money which may have been acquired by means of such  
3 unfair competition and to disgorge any profits realized by defendants as a result of its unfair,  
4 unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ.  
5 Code § 3345, and for such other relief as set forth in the Prayer for Relief.

6 **COUNT IV**

7 **UNJUST ENRICHMENT**

8 121. Plaintiff incorporates by reference the preceding allegations.

9 122. This Cause of action is pled in the alternative to all claims and/or causes of action  
10 at law.

11 123. Defendant has received a benefit from plaintiff and the class members in the form  
12 of the prices plaintiff and the class members paid for defendants' title insurance.

13 124. Defendants are aware of their receipt of the above-described benefit.

14 125. Defendants received the above-described benefit to the detriment of plaintiff and  
15 each of the other members of the class.

16 126. Defendants continue to retain the above-described benefit to the detriment of  
17 plaintiff and the class members.

18 127. As a result of defendants' unjust enrichment, plaintiff and the class members have  
19 sustained damages in an amount to be determined at trial and seek full disgorgement and  
20 restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the  
21 unlawful or wrongful conduct alleged above.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE, plaintiff demands:**

24 A. That the alleged combination and conspiracy among the defendants and their co-  
25 conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of  
26 Section 1 of the Sherman Act;

27 B. That the court declares the premiums charged are excessive under state law and  
28 order damages;



1 C. That judgment be entered against defendants, jointly and severally, and in favor of  
2 plaintiff, and each member of the class it represents, for threefold the damages determined to  
3 have been sustained by plaintiff; and each member of the class it represents, together with the  
4 cost of suit, including a reasonable attorneys' fee;

5 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and  
6 their respective officers, directors, agents and employees, and all other persons acting or claiming  
7 to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from in  
8 any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid  
9 combination, conspiracy, agreement, understanding or concert of action, adopting or following  
10 any practice, plan, program, or design having a similar purpose or effect in restraining  
11 competition; and

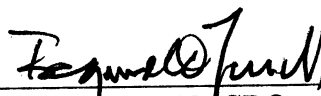
12 E. Such other and further relief as may appear necessary and appropriate.

13 **JURY TRIAL DEMANDED**

14 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged  
15 herein.

16  
17  
18  
19  
20 Date: April 8, 2008

Respectfully submitted,

21  
22  
23 By:   
24 DONALD AMAMGBO  
25 REGINALD TERRELL  
26 Attorneys for Plaintiffs  
27  
28

# **EXHIBIT 4**

ORIGINAL  
FILED  
08 JUL 14 PM 4:13  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

E-filing

EMC

**CV 08**

**3391**

RUBEN ROMERO and SARAH YAHN, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

FIDELITY NATIONAL FINANCIAL, INC.,  
FIDELITY NATIONAL TITLE INSURANCE  
COMPANY, TICOR TITLE INSURANCE  
COMPANY, TICOR TITLE INSURANCE  
COMPANY OF FLORIDA, CHICAGO TITLE  
INSURANCE COMPANY, NATIONAL TITLE  
INSURANCE COMPANY OF NEW YORK, INC.,  
SECURITY UNION TITLE INSURANCE  
COMPANY, THE FIRST AMERICAN  
CORPORATION, FIRST AMERICAN TITLE  
INSURANCE COMPANY, UNITED GENERAL  
TITLE INSURANCE COMPANY, LANDAMERICA  
FINANCIAL GROUP, INC., COMMONWEALTH  
LAND TITLE INSURANCE COMPANY,  
LAWYERS TITLE INSURANCE CORPORATION,  
TRANSNATION TITLE INSURANCE COMPANY,  
STEWART TITLE GUARANTY COMPANY,  
STEWART TITLE INSURANCE COMPANY, OLD  
REPUBLIC NATIONAL TITLE INSURANCE  
COMPANY, and OLD REPUBLIC  
INTERNATIONAL CORPORATION,

Defendants.

Case No. \_\_\_\_\_

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Plaintiffs Ruben Romero and Sarah Yahn, on behalf of themselves and all others similarly  
2 situated, allege as follows:

### 3 INTRODUCTION

4 1. Plaintiffs bring this antitrust action on behalf of all persons and entities who purchased  
5 title insurance in the State of California directly from the named defendants or any co-conspirator as  
6 identified in this Complaint.

7 2. Title insurance is one of the most costly items associated with a real estate purchase,  
8 aside from the purchase price of the property. In 2005, the price of title insurance for residential  
9 properties ranged from approximately \$1,010 (for a \$250,000 property) to \$1,490 (for a \$500,000).  
10 Title insurance premiums for more expensive homes and commercial properties are significantly  
11 higher.

12 3. Title insurance differs from other kinds of insurance in three respects. First, unlike  
13 automobile, life, homeowners or other forms of insurance, which protect consumers from loss  
14 resulting from an event that may occur in the future, title insurance offers protection from events that  
15 occurred in the past that may affect the title to the property. Second, unlike other forms of insurance,  
16 in which coverage may vary, most title insurance policies are based on a single set of form policies,  
17 published by the American Land Title Association, and provide substantially the same protection.  
18 Third, unlike other forms of insurance, title companies do not market their products directly to the  
19 consumers who pay for them. Instead, title insurers rely on "reverse competition" to market and sell  
20 their products. They pay commissions, kick-backs or referral fees, or provide other inducements to  
21 real estate agents, banks, lenders, builders and others involved in real estate transactions to use their  
22 insurance products as part of those transactions.

23 4. In California, the title insurance market is dominated by five companies and their  
24 affiliates or subsidiaries: Fidelity National Financial, Inc., First American Corporation, LandAmerica  
25 Financial Group, Inc., Stewart Title Guaranty Title Company, and Old Republic National Title  
26 Insurance Company. Combined, these five affiliate groups sell about 92 percent of the title insurance  
27 policies sold in California – or roughly \$2.85 billion of the \$3.1 billion in title insurance premiums  
28 collected from California consumers in 2004.

5. In some of the major markets in the United States, such as New York, these same title insurers collectively meet, jointly set rates, and file these rates with the applicable state insurance authority. The rates are not subject to any meaningful review or regulation, however. Moreover, the companies agree to fix the price of title insurance at levels that include commissions, kick-backs and other inducements paid to middlemen to steer business referrals to these companies. These agreed-upon rates far exceed the risk and loss experience associated with title insurance. As a result of their joint rate setting agreement, no company competes on price to the consumer.

6. Having agreed to fix prices in states where joint rate setting occurs, the five groups of affiliated companies agreed not to compete based on price to the consumer in other states, including California, where regulation of filed rates is non-existent. The result of this arrangement in California is that these companies have agreed to compete by offering inducements to middlemen for business referrals and thereby have fixed the rates of title insurance premiums at supra competitive levels.

7. These agreements and activities by five affiliate groups of title insurers, combined with their market dominance in the State, have enabled these companies to maintain the price of title insurance in California at artificially high levels. California regulators have acknowledged the harm these agreements and this anti-competitive conduct have caused consumers during the Class Period.

8. In 2005, for example, the California Office of the Insurance Commissioner found an “astonishing number” of kickbacks and similar inducements by title insurers to middlemen in violation of state law. A report to the California Insurance Commissioner prepared that same year by Birny Birnbaum, a consulting economist, also found “numerous examples in California of illegal rebates and kickbacks where the title insurer or the underwritten title company provides money, free services or other things of value to a real estate agent, a lender or homebuilder in exchange for business referrals.” (*An Analysis of Competition in the California Title Insurance and Escrow Industry*, December 2005, p.3) Similar findings by California Insurance Commissioner, Steve Poizner, led to a February 2007 statement in which the Commissioner declared that “reasonable price competition does not exist for title and escrow services” in California. (*Insurance Commissioner Steve Poizner Issues Statement Following Decision by OAL in New Regulations, California Department of Insurance*, February 22, 2007.)

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) and 28 U.S.C. §§ 1331, 1332(d) and 1337(a). This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

## PARTIES

14. Plaintiffs Ruben Romero and Sarah Yahn, a married couple, are individuals residing in California. During the Class Period, plaintiffs Romero and Yahn purchased title insurance in California directly from one or more of the defendants and have been injured by reason of the antitrust violations alleged.



**Defendants**

**A. Fidelity Family of Title Companies**

15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National does business in California through one or more of its subsidiaries, including defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title Insurance Company, and Chicago Title insurance Company. Fidelity National is registered to do business in California.

16. Defendant Fidelity National Title insurance Company ("Fidelity Title") is a California corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity Title does business in California, is a licensed title insurance company in California, and is registered to do business in California.

17. Defendant Ticor Title Insurance Company ("Ticor") is a California corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Ticor does business in California, is a licensed title insurance company in California, and is registered to do business in California.

18. Defendant Ticor Title Insurance Company of Florida ("Ticor Florida") is a Florida corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Ticor Florida does business in California, is a licensed title insurance company in California, and is registered to do business in California.

19. Defendant Chicago Title insurance Company ("Chicago Title") is a Missouri corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Chicago Title does business in California, is a licensed title insurance company in California, and is registered to do business in California.

20. Defendant National Title Insurance of New York, Inc. ("National Title") is a New York corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. National Title does business in California, is a licensed title insurance company in California, and is registered to do business in California.

21. Defendant Security Union Title Insurance Company (“Security Union”) is a California corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Security Union does business in California, is a licensed title insurance company in California, and is registered to do business in California.

22. The Fidelity family of title insurance companies (collectively “Fidelity”) including Fidelity National, Fidelity Title, Ticor, Ticor Florida, Chicago Title, National Title, Security Union, and their affiliates, sells title insurance to purchasers of commercial and residential real estate throughout the United States, including California. Nationally, Fidelity accounts for approximately 27 percent of title premiums. These sales amounted to approximately \$4.6 billion in 2006. Fidelity, Chicago Title, and Ticor also were founding members of the New York rate-setting organization known as TIRSA (discussed below), and have collectively fixed title insurance rates in the State of New York under that rate setting regime since TIRSA’s inception in 1991.

23. Fidelity and its affiliates are wholly-owned and controlled by Fidelity National. Through its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance, and claims management services. During 2006, Fidelity National had revenues of approximately \$9.4 billion. Fidelity engaged in the conduct challenged here with the approval of Fidelity National.

#### **B. The First American Family of Title Companies**

24. Defendant The First American Corporation (“First American Corp.”) is a California corporation with its headquarters located at 1<sup>st</sup> American Way, Santa Ana, California 92707. First American does business in California through one or more of its subsidiaries, including First American Title Insurance Company.

25. Defendant First American Title Insurance Company (“First American Title”) is a California corporation with its headquarters at First American Way, Santa Ana, California 92707. First American Title does business in California, is a licensed title insurance company in California, and is registered to do business in California.

26. Defendant United General Title Insurance Company (“United General”) is a Colorado corporation located at 8310 S. Valley Highway, Suite 130, Englewood, Colorado 80112. United

1 General does business in California, is a licensed title insurance company in California, and is  
2 registered to do business in California.

3 27. The First American family of title insurance companies (collectively "First  
4 American"), including defendants First American, First American Title, United General, and their  
5 affiliates, sells title insurance to purchasers of commercial and residential real estate throughout the  
6 United States, including California. Nationally, First American accounts for approximately 29 percent  
7 of title premiums. These sales amounted to approximately \$4.8 billion in 2006.

8 28. The First American family of title insurance companies and their affiliates are wholly-  
9 owned and controlled by First American Corp. Through its subsidiaries, First American is a provider  
10 of title insurance, business information, and related products and services. During 2006, First  
11 American had revenues of approximately \$8.5 billion. The First American family of title insurance  
12 companies and their affiliates engaged in the conduct challenged here with the approval of First  
13 American Corp.

14 **C. LandAmerica Family of Title Companies**

15 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
16 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
17 business in California through one or more of its subsidiaries, including Commonwealth Land Title  
18 Insurance Company, Lawyers Title Insurance Corporation, and Transnation Title insurance Company.

19 30. Defendant Commonwealth Land Title Insurance Company ("Commonwealth") is a  
20 Pennsylvania corporation with its principal place of business located at 5600 Cox Road, Glen Allen,  
21 Virginia 23060. Commonwealth does business in California, is a licensed title insurance company in  
22 California, and is registered to do business in California.

23 31. Defendant Lawyers Title Insurance Corporation ("Lawyers Title") is a Nebraska  
24 corporation with its principal place of business located at 5600 Cox Road, Glen Allen, Virginia 23060.  
25 Lawyers Title does business in California, is a licensed title insurance company in California, and is  
26 registered to do business in California.

27 32. Defendant Transnation Title Insurance Company ("Transnation") is a Nebraska  
28 corporation with its principal place of business located at 5600 Cox Road, Glen Allen, Virginia 23060.

Transnation does business in California, is a licensed title insurance company in California, and is registered to do business in California.

33. The LandAmerica family of title insurance companies (collectively "LandAmerica"), including defendants LandAmerica, Commonwealth, Lawyers Title, Transnation, and their affiliates, is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including California. Nationally, LandAmerica accounts for approximately 19 percent of title premiums. These sales amounted to approximately \$3.15 billion in 2006.

34. The LandAmerica family of title insurance companies and their affiliates are wholly-owned and controlled by defendant LandAmerica Financial Group, Inc. Through its subsidiaries, LandAmerica is a provider of title insurance and other products and services that facilitate the purchase, sale, transfer, and financing of residential and commercial real estate. During 2006, LandAmerica had revenues of approximately \$4 billion. The LandAmerica family of title insurance companies and their affiliates engaged in the conduct challenged here with the approval of LandAmerica.

**D. Stewart Family of Title Companies**

35. Defendant Stewart Title Guaranty Company ("Stewart Guaranty") is a Texas corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. Stewart Guaranty does business in California, is a licensed title insurance company in California, and is registered to do business in California.

36. Defendant Stewart Title insurance Company ("Stewart Title") is a New York corporation with its principal place of business located at 300 E. 42<sup>nd</sup> Street, Floor 10, New York, New York 10017. Stewart Title does business in California, is a licensed title insurance company in California, and is registered to do business in California.

37. The Stewart family of title insurance companies (collectively "Stewart"), including defendants Stewart Guaranty, Stewart Title, and their affiliates, sells title insurance to purchasers of commercial and residential real estate throughout the United States and California. Nationally, Stewart accounts for approximately 12 percent of title premiums. These sales amount to approximately \$2 billion in 2006.

**E. Old Republic Family of Title Companies**

38. Old Republic National Title Insurance Company ("Old Republic") is a Delaware corporation with its principle place of business located at 400 Second Avenue South, Minneapolis, Minnesota 55401. Old Republic sells title insurance to purchasers of commercial and residential real estate throughout the United States, including California, and is a licensed title insurance company in California and is registered to do business in California. Nationally, Old Republic accounts for approximately 6 percent of title premiums that, in 2006, amount to roughly \$1 billion.

39. Old Republic and its affiliates are wholly owned and/or controlled by defendant Old Republic International Corporation ("Old Republic International"), a Delaware corporation headquartered in Chicago, Illinois. Through its subsidiaries, Old Republic International is a provider of title insurance, general insurance, mortgage guaranty insurance, and life and health insurance. Old Republic international had 2006 revenues of approximately \$3.8 billion. Old Republic engaged in the conduct alleged here with the approval of Old Republic International.

40. Together, defendants account for more than 90 percent of the market for title insurance premiums consumers pay in California. Defendants account for more than 85 percent of the national market for title insurance premiums. In 2006, those sales amounted to approximately \$14.5 billion.

**AGENTS AND CO-CONSPIRATORS**

41. The acts alleged against the defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees or representatives, while actively engaged in the management or operation of defendants' business or affairs.

42. Various other persons, firms or corporations not named as defendants may have participated as co-conspirators with the named defendants in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

43. Each defendant acted as the principal, agent or joint venturer of, or for, other defendants with respect to the acts, violations and common course of conduct alleged by plaintiffs.

**CLASS ACTION ALLEGATIONS**

44. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of the following Class:

All persons or entities who purchased title insurance in California directly from the defendants, their subsidiaries, agents and/or affiliates, or any co-conspirator, from the earliest date allowable by law through the present (the "Class Period").

Specifically excluded from this Class are the defendants; the officers, directors or employees of any defendant; any entity in which any defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

45. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

46. **Numerosity.** Members of the Class are so numerous that their individual joinder is impracticable. It is estimated that the Class consists of thousands of members.

47. **Existence and predominance of common questions.** Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. These common questions include:

- a. Whether defendants engaged in a contract, combination or conspiracy among themselves and/or their co-conspirators to raise, fix, and maintain the prices of title insurance sold in California;
- b. The identities of the co-conspirators;
- c. The duration of the conspiracy and nature and character of the acts done in furtherance of the conspiracy;
- d. Whether the conspiracy violated Section 1 of the Sherman Act;
- e. Whether defendants actively concealed the contract, combination or conspiracy from plaintiff and other Class members;
- f. Whether the conduct of defendants and their co-conspirators caused prices of title insurance premiums to be artificially inflated to non-competitive levels; and
- g. Whether plaintiffs and other members of the Class were injured by the conduct of defendants and their co-conspirators and, if so, the appropriate class-wide measure of damages and appropriate injunctive relief.



1       48.    **Typicality.** Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs  
2 bought title insurance from one of the defendants and, like all Class members, were damaged by the  
3 wrongful conduct of defendants and their co-conspirators, and seek relief common to the Class.

4       49.    **Adequacy.** Plaintiffs are adequate representatives of the Class because their interests  
5 do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have  
6 retained counsel competent and experienced in complex class action litigation, and intend to prosecute  
7 this action vigorously. The interests of the members of the Class will be fairly and adequately  
8 protected by Plaintiffs and their counsel.

9       50.    **Superiority.** A class action is superior to all other available methods for the fair and  
10 efficient adjudication of this controversy because joinder of all members is impracticable.  
11 Furthermore, as the damages suffered by individual Class members may be relatively small, the  
12 expense and burden of individual litigation makes it impossible for members of the Class to  
13 individually redress the wrongs done to them. There will be no difficulty in the management of this  
14 case as a class action.

15       51.    In the alternative, the Class may be certified because:

- 16           a.    The prosecution of separate actions by the individual members of the Class  
17 would create a risk of inconsistent or varying adjudications with respect to  
18 individual Class members and would establish incompatible standards of  
19 conduct for defendants;
- 20           b.    The prosecution of separate actions by individual Class members would create  
21 a risk of adjudications with respect to them that would, as a practical matter, be  
22 dispositive of the interests of other Class members not parties to the  
23 adjudications, or substantially impair or impede the ability of other Class  
24 members to protect their interests; and
- 25           c.    Defendants have acted or refused to act on grounds generally applicable to the  
26 Class, making final injunctive relief or corresponding declaratory relief with  
27 respect to the members of the Class as a whole an appropriate form of relief.  
28

52. Plaintiffs reserve the right to expand, modify, or alter the class definition in response to information learned during discovery.

### TRADE AND COMMERCE

53. During the Class Period, defendants were the major sellers of title insurance in the United States and California. Defendants controlled in excess of 85 percent of the market for title insurance in the United States and approximately 92 percent of the statewide market in California.

54. During the Class Period, defendants sold substantial quantities of title insurance in a continuous and uninterrupted flow of interstate commerce, including through and into this judicial district.

55. During the Class Period, Class members located outside of and within California purchased commercial or residential property and title insurance within California.

56. The activities of defendants and their co-conspirators, as described here substantially affected interstate trade and commerce in the United States, and in the State of California, and caused antitrust injury in the United States and in California.

### FACTUAL ALLEGATIONS

57. Defendants are competitors in the sale of title insurance to consumers throughout the United States, including California. They agreed and engaged in concerted efforts to (i) collectively set and charge supra-competitive rates for title insurance; (ii) include agency commission costs in their calculated rates; (iii) embed within these costs payoffs, kickbacks, and other charges that are unrelated to the issuance of title insurance; and (iv) hide these supposed "costs" from regulatory scrutiny by funneling them to and through title agents over which the government agencies have no ability or authority to regulate.

#### **I. The Nature of Title Insurance**

58. Title insurance differs from other, more familiar kinds of insurance. Unlike automobile and homeowner insurance policies that protect consumers from events that may occur in the future, title insurance offers protection from events that might have occurred in the past and may affect the title to the real estate that a consumer is buying.

1           59. Title insurance, therefore, protects the purchaser of a property from unidentified defects  
2 in the title that would interfere with the full ownership and use of the property and the ultimate right to  
3 resell the property. Possible title defects include errors or omissions in deeds, mistakes in examining  
4 records, forgery, undisclosed heirs, missing heirs, liens for unpaid taxes, and liens by contractors.

5           60. There are two basic types of title insurance policies – the lender’s policy and the  
6 owner’s policy. The lender’s policy is issued to the lender and will pay the lender the remaining  
7 principal on the loan if there is a title problem that cannot be resolved. The owner’s policy is issued to  
8 the buyer of the property for the full purchase price of the property. Consequently, the maximum  
9 liability on a title insurance policy is the purchase price of the property.

10           61. In a typical home purchase, both a lender’s policy and an owner’s policy are issued.  
11 Lenders require a lender’s policy whenever there is a loan associated with the real estate transaction.  
12 The lender’s policy continues in force until the loan is extinguished, and the owner’s policy continues  
13 until the property is sold.

14           62. With a refinancing transaction, the existing lender’s policy is terminated and a new  
15 lender’s policy is issued. The existing owner’s policy remains in place. The lender does not pay for  
16 the lender’s policy in a purchase or refinancing transaction. The premium may be paid by the buyer or  
17 seller in a purchase transaction, and by the owner in a refinancing transaction.

18           63. Title insurers do not compete on the basis of the policies or coverage that they provide.  
19 In fact, almost all title policies are based on a single set of form policies published and maintained by  
20 the American Land Title Association, the title insurance industry’s national trade association.  
21 Moreover, the end goal of an exhaustive title search by a title insurer is not to provide coverage for  
22 title defects that the search uncovers, but rather to exclude coverage for any such defects and,  
23 therefore, further reduce the real value of the title policy that is written to cover only unknown defects  
24 in the title at the time of issuance. As a result, title insurance is a homogenous, commodity product.  
25 There is no substantive, if any, difference between a policy offered by one company in comparison to  
26 a policy offered by another company for the same property transaction.

27           64. Title insurance is one of the most costly items associated with the closing of a real  
28 estate transaction, aside from the purchase price of the property. In California, rates for title insurance

1 are based on a percentage of the total value of the property being insured. For residential properties,  
2 this price ranged in 2005 from about \$1,010 (for a \$250,000 property) to about \$1,490 (for a \$500,000  
3 property). For more expensive homes and commercial properties, these prices are significantly  
4 higher. The amount consumers spent on title insurance in California rose dramatically from  
5 approximately \$700 million in 1995 to about \$3.1 billion in 2004.

6 65. Title insurance companies recognize that consumers generally lack the means to make  
7 independent decisions regarding the scope, terms and price of title insurance. Title insurance referrals  
8 are typically made by lawyers, mortgage brokers, lenders, realtors or other professionals who take part  
9 in the transaction, and the cost of title insurance premium is presented to the consumer in the closing  
10 statement at the time of closing. Typically, consumers do not shop around or negotiate the price for  
11 title insurance. As a result of these dynamics, the supply and demand principles that would apply in a  
12 competitive market are not implicated, and the title insurance industry is not subject to any meaningful  
13 competitive constraints.

14 66. The title insurance market in California is dominated by five groups of affiliated  
15 companies, that when combined, sell approximately 92 percent of the title insurance policies sold in  
16 California, and that own and control the "title plants" in many California counties that every title  
17 insurer must rely on to issue title policies. "Title plants" contain information regarding property  
18 transfers and liens reaching back many years.

19 67. Title companies, in marked contrast to property, casualty, life, and other traditional  
20 insurance carriers, choose not to market their products directly to consumers who pay for them.  
21 Instead, the title insurance industry operates on what is termed a "reverse competition" model.  
22 Reverse competition means that title companies solicit business referrals from the other major players  
23 in the home purchase scenario – real estate agents and agencies, banks, lenders, builders, developers,  
24 and others such as middlemen or go-betweens. The title companies pay middlemen for these referrals  
25 in the form of direct payments, advertising expenses, junkets, parties, and other kickbacks and  
26 inducements. In addition, middlemen such as Windermere, John L. Scott, and Coldwell Banker-Bain,  
27 who themselves control a substantial portion of the real estate brokerage market, take significant  
28 ownership stakes in local title agencies and affiliates of the major title insurers. These middlemen

1 then profit be receiving a direct monetary return from the referral of title business to the title agent in  
2 which they maintain an ownership interest.

3 68. Reverse competition does not benefit consumers through market-driven forces.  
4 Instead, companies spend much of their marketing budgets entertaining real estate agents, banks,  
5 lenders, builders, developers, and others in an effort to convince these middlemen to steer the home-  
6 buying clients to their companies for the clients' title insurance needs.

7 69. Rather than seek to capture business by offering lower prices, title insurers offer  
8 kickbacks in the form of finder's fees, gifts, meals, business services, and other financial enticements.  
9 As a result, title insurers compete and increase their business through higher pricing (that allows for  
10 generous inducements and kickbacks) not lower pricing to consumers.

11 70. In some of the major markets in the United States, these same title insurers collectively  
12 meet, jointly set rates, and file these rates with the applicable state insurance authority. The rates are  
13 not subject to any meaningful review or regulation. The companies agree to fix the price of title  
14 insurance far in excess of the risk and loss experience associated with such insurance. As a result of  
15 the joint agreement as to rates, competition is relegated to the middleman, and therefore, no title  
16 company competes on price to the consumer.

17 71. In addition to paying inducements and kickbacks, the title insurance companies and  
18 their agents divide the market of real-estate middlemen through the use of Affiliated Business  
19 Arrangements ("ABAs"), where the dominant real estate brokers purchase significant ownership  
20 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for  
21 using the preferred title insurance providers and lock out independent title insurers.

22 72. Having agreed to fix prices in states where joint rate-setting occurs, the companies  
23 agreed not to compete based on price to the consumer in other states, including California, where  
24 regulation of filed rates is lax or non-existent. Thus, title insurance companies agree to set prices at  
25 supra-competitive levels and to compete based on offering inducements to middlemen.

26 73. One example of competing based on illegal kickbacks to middlemen came to light in  
27 July 2005, when nine major title companies reached an agreement with the California Department of  
28 Insurance to pay \$37.8 million in refunds and penalties for illegal rebating where national

1 homebuilders, lenders, and realtors were encouraged to steer business to particular title insurers. The  
2 nine companies were members of three insurance groups, all three of which are defendants here –  
3 LandAmerica Financial Corporation, The First American Title Insurance Company, and Fidelity  
4 National Financial, Inc.

5 74. Under the arrangement, the homebuilder formed a reinsurance company affiliate – a  
6 captive reinsurer. Then, under an agreement with the title insurer, the homebuilder would steer the  
7 consumer to the title insurer and the title insurer would cede a portion of the premium – typically 50%  
8 after the first \$200 to \$300 – to the captive reinsurer with no substantive risk of loss associated with  
9 the reinsurance transaction. In effect, the arrangement allowed for the title insurer to rebate 50% of  
10 the premium to the homebuilder.

11 75. As a result of this scheme, the companies were accused of paying \$25.4 million in  
12 illegal kickbacks to various lenders, builders, and realtors in exchange for the referral of title insurance  
13 business. Their actions involved more than 82,000 California households that purchased or refinanced  
14 a home between 1997 and 2004.

15 76. In March 2005, the U.S. Department of Housing and Urban Development (“HUD”)  
16 determined that 80% or more of the premium paid by a consumer for title insurance frequently goes to  
17 the local title agent or lawyer who ordered the policy and may be running the closing.

## 18 **II. Lack of Regulatory Supervision in California**

19 77. In California, there is a lack of regulatory authority and oversight over title insurance  
20 companies. The rates in California are not set as part of deliberate state intervention, and the state  
21 does not meaningfully renew or approve these rates. The rates at issue in this case went into effect  
22 without review.

23 78. Although the California Office of the Insurance Commissioner (“OIC”) found an  
24 “astonishing number” of kickbacks and similar inducements in violation of state law, it does not  
25 actively oversee or regulate rates, and, does not, by its own admission, have the power to do so. The  
26 absence of regulation in California has allowed and continues to allow collusive behavior and  
27 excessive rates to flourish at the expense of the consumers.



79. In February 2007, Steve Poizner, the Insurance Commissioner of California, issued a statement concluding that "reasonable price competition does not exist for title and escrow services." (*Insurance Commissioner Steve Poizner Issues Statement Following Decision by OAL on New Regulations*, California Department of Insurance, February 22, 2007.)

80. Poizner's press release goes on to state that the costs of the illegal inducements that title companies lavish on intermediaries to obtain the homeowner's business are passed on to the homeowner. Indeed, Poizner's press release states: "As a result, over the past 10 years, even though technology has lowered the costs of title searches and document production, title and escrow charges have not come down. In fact, title insurance on the average home in California costs roughly double what it cost 10 years ago, despite the fact that [title insurance] companies' production costs have plummeted."

81. A report to the California Insurance Commissioner prepared during December 2005 by Birny Birnbaum, Consulting Economist, found abuses of the lack of regulatory supervision in this state. For instance, his report states: "We found numerous examples in California of illegal rebates and kickbacks where the title insurer or the underwritten title company provides money, free services or other things of value to a real estate agent, a lender or homebuilder in exchange for business referrals." (*An Analysis of Competition in the California Title Insurance and Escrow Industry*, December 2005, p.3.)

82. The excess money paid to title agents not only works to steer business to defendants, but also serves to boost defendants' profits through the inflated revenues they obtain to cover the agency payments, and through their ownership or management stake in many of these agencies.

### **III. Indicators of a Lack of Competition and Conditions Conducive to Collusive Rate Setting**

#### **A. Low or Declining Title Search Costs**

83. The bulk of the title insurance premium goes to expenses as opposed to claim payments. Title insurers paid an average of 4.6 percent of premiums for claims and claim settlement expenses from 1995 to 2004, compared to around 80 percent of the total premium collected for property and casualty insurance. Title searches have become less labor intensive, especially in large urban counties and cities, as more of the pertinent information regarding claim of title is available

1 online. As a result, the costs of production and the risk of loss have decreased. None of these factors  
2 resulted in price competition at the consumer level, however.

3 84. Despite declining costs of production, increased number of transactions and increased  
4 revenue per transaction, there have been few rate changes by title insurers over the past five years.  
5 During a period when costs per unit of production declined, underwritten title companies and title  
6 insurers maintained excessive rates. That prices charged by title insurers and underwritten title  
7 companies were not and are not responsive to the changing costs of production or increasing revenue  
8 per transaction at a given set of rates is evidence of an agreement not to compete based on price.

9 **B. Title Premiums Include Improper Payments, Commissions and Inducements**

10 85. The defendant title companies provide illegal rebates and kickbacks where the title  
11 insurer or the underwritten title company provides money, free services, or other things of value to a  
12 real estate agent, a lender, or homebuilder in exchange for business referrals. These illegal rebates and  
13 kickbacks – a consequence of reverse competition – show that title insurance rates are supra-  
14 competitive.

15 **C. Market Dominance and Lack of Competition Based on Price to Consumer**

16 86. The volume of the California title insurance transactions is substantial. The number of  
17 residential title transactions exceeded 3 million during 2004 alone. Commercial property transactions  
18 are in addition to this volume.

19 87. The title insurance market is highly concentrated – few title insurers account for the  
20 vast majority of title insurance sales – at both the statewide level and at the county level in California.  
21 For example, the five defendant families controlled approximately 92 percent of the California title  
22 insurance market in 2005.

23 88. Defendants have maintained their market dominance and ability to control prices for  
24 title insurance in part because of the substantial barriers to entry in the market. Between 1995 and  
25 2005, the number of title insurer groups declined as title insurers acquired other title insurers. Few  
26 companies entered the title insurance business during the period from 2000 through 2005.

27 89. Access to title plants is a barrier to entry. Established relationships between entities  
28 that steer consumers to title insurance sellers is an additional barrier to entry.

1           90. As a result of their market dominance and anti-competitive practices, defendants enjoy  
2 excessive profits at the expense of the consumers. For example, title insurance underwriters earned  
3 after-tax profits of 49.0 percent in 2003 and 32.3 percent in 2004.

4 **IV. Price Fixing in Other Large Markets that Affect California**

5           91. New York is one of several states in which the leading title insurers collectively fix  
6 their prices through a rate-setting organization known as the Title Insurance Rate Service Association,  
7 Inc., or TIRSA. TIRSA collects from defendants and TIRSA's other members revenue and cost  
8 information and annually submits it in aggregate form along with collectively set title rates to the New  
9 York Insurance Department. Under this rate setting regime, defendants have charged identical and  
10 collectively fixed rates to consumers since TIRSA's inception in 1991.

11           92. The New York Insurance Department is charged with reviewing the title rates that  
12 defendants (through TIRSA) collectively fix. Defendants have made this impossible, however, by  
13 manipulating the rates so that they are principally based on costs over which the Insurance  
14 Department has neither the authority nor the ability to assess.

15           93. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title  
16 insurance premiums are based on the so-called "costs" associated with the payment of agency  
17 commissions. These costs are referred to as so-called "agency commissions." As in California, these  
18 commissions chiefly include kickbacks and other costs unrelated to the issuance of title insurance.  
19 Instead, as in California, these supposed costs are funned to and through title agents to increase  
20 defendants' overall business and get them more business.

21           94. New York Insurance Law does not authorize TIRSA to include kickbacks and other  
22 agency commission payments that are unrelated to the issuance of title insurance in its collectively  
23 fixed rates. The New York Insurance Department has acknowledged, however, that it lacks the  
24 authority to review any agency commission payments and, therefore, cannot properly evaluate  
25 TIRSA's calculated rates.

**VIOLATIONS ALLEGED**

**First Claim for Relief**

**(Violation of Section 1 of the Sherman Act)**

95. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

96. Beginning at a time presently unknown to Plaintiffs, but at least as early as May 2004, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

97. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among defendants and their co-conspirators, the substantial terms of which were:

- a. To fix, raise, maintain and stabilize the price of title insurance throughout California;
- b. To fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and
- c. To allocate and divide the market for title insurance in California.

98. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California which is a *per se* violation of Section 1 of the Sherman Act.

99. Defendants' price fixing, market allocation, and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

100. Through their collective price-fixing, market allocation and division, as well as manipulation of the regulatory process, defendants harmed competition by charging consumers supra-competitive prices for title insurance in California, evidenced by the uniformly higher prices as compared to the cost of providing the title insurance.

101. The combination and conspiracy alleged here had, among other things, the following effects:

- a. Price competition in the sale of title insurance has been restrained, suppressed, and/or eliminated;
- b. Prices for title insurance sold by defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels; and
- c. Purchasers of title insurance have been deprived of the benefits of free and open competition.

102. During the period of the antitrust violations by defendants and their co-conspirators, Plaintiffs and each member of the Class they represent purchased title insurance and, by reason of the antitrust violations alleged here, paid more for such than they would have paid in the absence of the antitrust violations. As a result, Plaintiffs and members of the Class have been injured in an amount presently undetermined.

### Second Claim for Relief

#### (Violation of the California Cartwright Act)

103. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

104. Defendants' contract, combination, trust or conspiracy was centered in, carried out, effectuated and perfected mainly within California, and defendants' conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

105. Beginning at a time presently unknown to Plaintiffs, but at least as early as May 2004, defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Sections 16720, *et seq.* of the California Business and Professional Code. Defendants acted in violation of Sections 16720, *et seq.* to fix, raise, stabilize and maintain prices of, and allocate markets for title insurance at supra-competitive levels.

1           106. The violations of Sections 16720, *et seq.* of the California Business and Professions Code  
2 consisted of a continuing unlawful trust and concert of action among the defendants and their co-  
3 conspirators, the substantial terms of which were to fix, raise, maintain and stabilize the prices of, and to  
4 allocate markets for title insurance in the state of California.

5           107. For the purpose of forming and effectuating the unlawful agreement, defendants and their  
6 co-conspirators did those things which they combined and conspired to do, including the acts, practices  
7 and course of conduct alleged above and the following:

- 8           a. To fix, raise, maintain and stabilize the price of title insurance;  
9           b. To allocate markets for title insurance amongst themselves; and  
10           c. To allocate and divide the market for title insurance in California.

11           108. The combination and conspiracy alleged here had the following effects:

- 12           a. Price competition in the sale of title insurance has been restrained,  
13               suppressed and/or eliminated in California and throughout the  
14               United States;  
15           b. Price for title insurance sold by defendants and their co-  
16               conspirators have been fixed, raised, maintained and stabilized at  
17               artificially high, non-competitive levels in California and  
18               throughout the United States; and  
19           c. Those who purchased title insurance from defendants and their co-  
20               conspirators have been deprived of the benefit of free and open  
21               competition.  
22

23           109. Plaintiffs and the other members of the Class paid supra-competitive, artificially inflated  
24 prices for title insurance.

25           110. As a direct and proximate result of defendants' unlawful conduct, Plaintiff and the  
26 members of the Class have been injured in their business and property because they paid more for title  
27 insurance than they otherwise would have paid in the absence of defendants' unlawful conduct.  
28



111. As a result of defendants' violation of Sections 16720, *et seq.* of the California Business and Professions Code, Plaintiffs seek treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and Professions Code.

### **Third Claim for Relief**

#### **(Violation of the California Unfair Competition Law)**

112. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

113. Defendants' business acts and practices were centered in, carried out, effectuated and perfected mainly within California, and defendant's conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

114. During the Class Period, and continuing to the present, defendants committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

115. This Claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from defendants for acts that violated Sections 17200, *et seq.* of the California Business and Professions Code, commonly known as the Unfair Competition Law.

116. Defendants' conduct violated Section 17200. The acts, omissions, misrepresentations, practices and non-disclosures by defendants constituted a common continuous and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Sections 17200, *et seq.*, including the following:

- a. Defendants' acts and practices violate Section 1 of the Sherman Act and Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;
- b. Defendants' acts and practices are unfair to consumers of title insurance in California and throughout the United States within the

meaning of Section 17200 of the California Business and Professions Code; and

c. Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

117. Plaintiffs and each of the Class members are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by defendants as a result of their illegal business acts or practices as alleged here.

118. The illegal conduct alleged here is continuing and there is no indication that defendants will not continue such activity into the future.

119. The unlawful and unfair business practices of defendants, as described above, caused Plaintiffs and the members of the Class to pay supra-competitive and artificially-inflated prices for title insurance. Plaintiffs and the members of the Class suffered injury in fact and lost money or property as a result.

120. Plaintiffs request that this Court enter such order or judgment as may be necessary to enjoin defendants from continuing their unfair, unlawful, and/or deceptive practices, to restore to them and the Class members any money that may have been unjustly acquired by defendants by means of defendants' unfair competition.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the members of the Class pray for relief as follows:

A. That this action be certified and maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

B. That the unlawful conduct, contract, conspiracy or combination alleged here be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

C. That Plaintiffs and the Class recover damages, including treble damages, and restitution, as provided by federal and state antitrust and unfair competition laws, and that a joint and several judgment in favor of Plaintiffs and the Class be entered against the defendants;

D. That defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents, employees, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from in any manner: (1) continuing, maintaining, or renewing the conduct, contract, conspiracy or combination alleged here; (2) entering into any other conspiracy similar to the ones alleged here; (3) entering into any other contract, conspiracy or combination having similar purpose or effect; and (4) adopting or following any practice, plan, program, or device having a similar purpose or effect;

E. That Plaintiffs and the Class be awarded pre-and post-judgment interest, and that the interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

F. That Plaintiffs and the Class recover their costs of this suit, including reasonable attorneys' fees as provided by law; and

G. That Plaintiffs and the Class have such other, further and different relief as the case may require and the Court may deem just and proper under the circumstances.

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**JURY DEMAND**

Plaintiffs demand a trial by jury on all claims so triable.

DATED: July 14, 2008

Respectfully submitted,

**GIRARD GIBBS LLP**

By: 

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

CP

DEPUTY

6 [Additional counsel listed on signature page]

7 Attorneys for Plaintiffs

8  
 9  
 10 UNITED STATES DISTRICT COURT  
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 LOUIS AND SILVIA MARTINEZ, on )  
 13 behalf of themselves and all other similarly )  
 14 situated, )

15 Plaintiffs, )

16 vs. )

17 FIDELITY NATIONAL FINANCIAL, )  
 18 INC., FIDELITY NATIONAL TITLE )  
 19 INSURANCE COMPANY, TICOR TITLE )  
 20 INSURANCE COMPANY, TICOR TITLE )  
 21 INSURANCE COMPANY OF FLORIDA, )  
 22 CHICAGO TITLE INSURANCE )  
 23 COMPANY, NATIONAL TITLE )  
 24 INSURANCE OF NEW YORK, INC., )  
 25 SECURITY UNION TITLE INSURANCE )  
 26 COMPANY, THE FIRST AMERICAN )  
 27 CORPORATION, FIRST AMERICAN )  
 28 TITLE INSURANCE COMPANY, )  
 UNITED GENERAL TITLE INSURANCE )  
 COMPANY, LANDAMERICA )  
 FINANCIAL GROUP, INC., )  
 COMMONWEALTH LAND TITLE )  
 INSURANCE COMPANY, LAWYERS )  
 TITLE INSURANCE CORPORATION, )  
 TRANSNATION TITLE INSURANCE )  
 COMPANY, STEWART TITLE )  
 GUARANTY COMPANY and STEWART )  
 TITLE INSURANCE COMPANY )

Defendants.

Case No: 08 CV 0499 L WMc

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF SECTION 1 OF THE SHERMAN ACT;
2. VIOLATION OF CAL. BUS. AND PROF. CODE § 16720, *et seq.*;
3. VIOLATION OF CAL. BUS. AND PROF. CODE § 17200, *et seq.*; and
4. UNJUST ENRICHMENT

JURY TRIAL DEMANDED



1 Plaintiffs, Louis and Silvia Martinez, by their attorneys, on behalf of themselves and all  
2 others similarly situated, brings this action for treble damages and injunctive relief under the  
3 antitrust laws of the United States and based on statutes of the State of California against the  
4 above named defendants, demand a trial by jury, and complaining and alleging as follows:

5 **I. INTRODUCTION**

6 1. From the consumer's point of view, title insurance differs greatly from other,  
7 more familiar kinds of insurance. For one thing, while automobile and homeowner insurance  
8 policies protect consumers from an event that may occur in the future, title insurance offers  
9 protection from events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from  
11 problems that occurred in the past and may affect the title to the real estate that a consumer is  
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide.  
13 In fact, almost all title policies are based on a single set of form policies published and  
14 maintained by the national trade association, the American Land Title Association.  
15 Furthermore, the end goal of an exhaustive title search by a title insurer is not to provide  
16 coverage for title defects that the search uncovers, but rather to exclude coverage for any such  
17 defects and therefore, reduce the real value of the title policy which is written to cover only  
18 unknown defects in title at the time of issuance. As a result, title insurance is a commodity  
19 product.

20 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
21 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
22 paperwork and signings that culminate in the closing of a home purchase. Consumers who  
23 normally shop around for their insurance and carefully compare prices, typically emerge from  
24 the closing on their new home holding an insurance policy that they know virtually nothing  
25 about and that in all likelihood, they will never need.

26 4. The title insurance market in California consists of a dozen carriers, ranging in  
27 size from regional companies to national affiliates. However, the market is dominated by four  
28 groups of affiliated companies which, combined, sell over 90 percent of the title insurance

1 policies sold in California and which own and control the title plants in many California  
2 counties that every title insurer must rely on in order issue title policies.

3 5. Title companies, in marked contrast to property, casualty, life and other  
4 traditional insurance carriers, choose not to market their products directly to the consumers who  
5 pay for them. Instead, the title insurance industry operates on what is termed a "reverse  
6 competition" model. Reverse competition means that title companies solicit business referrals  
7 from the other major players in the home purchase scenario — real estate agents and agencies,  
8 banks, lenders, builders, developers and others: middlemen or go-betweens. The title  
9 companies pay middlemen for these referrals in the form of direct payments, advertising  
10 expenses, junkets, parties and other kick-backs and inducements. In addition, middlemen such  
11 as Windermere, John L. Scott and Caldwell Banker-Bain, who themselves control a significant  
12 portion of the real estate brokerage market, take significant ownership stakes in local title agents  
13 and affiliates of the major title insurers and thereby get a direct return in profit from the referral  
14 of title business to the title agent whom they partly or wholly own.

15 6. Reverse competition, as the term suggests, isn't a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets "wining and dining" real estate agents, banks,  
18 lenders, builders, developers and others in an effort to convince these middlemen to steer their  
19 home-buying clients to their companies for their title insurance needs.

20 7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review or regulation. The companies  
23 agree to fix the price of title insurance far in excess of the risk and loss experience associated  
24 with such insurance. As a result of the joint agreement as to rates, competition is relegated to  
25 the middleman. As a result of their joint rate setting and agreement, no company competes on  
26 price to the consumer.

27 8. Having agreed to fix prices in states where joint rate setting occurs, the  
28 companies agreed to not compete based on price to the consumer in other states, including

1 California, where regulation of filed rates is lax or non-existent. Thus, they agreed to set rates  
2 at supra competitive prices and to compete based on offering inducements to middlemen. In  
3 California, in three successive reports, the Office of the Insurance Commissioner ("OIC") has  
4 found an "astonishing number" of such inducements that are in violation of state law. However,  
5 the OIC does not actively oversee rates, and, in fact, does not by its own admission have the  
6 power to do so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant  
10 ownership stakes in favored title insurance affiliates. The real estate brokers then reward their  
11 associates for using the preferred insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiffs, on behalf of a Class of those purchasing title insurance  
13 in California, seek damages arising from defendants' violation of the Sherman Act as well as  
14 California statutory law.

## 15 **II. JURISDICTION AND VENUE**

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and  
17 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to  
18 obtain injunctive relief and to recover treble damages and the costs of suit, including a  
19 reasonable attorneys' fee, against defendants for the injuries sustained by plaintiffs and the  
20 members of the Class which they represent by reason of defendants' and their co-conspirators'  
21 violations, as hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1). As such, this  
22 Court has jurisdiction pursuant to 28 U.S.C. §1331. This Court also has supplemental  
23 jurisdiction pursuant to 28 U.S.C. §1367(a).

24 12. Defendants transact business, maintain offices or are found within the Southern  
25 District of California. The interstate commerce described hereinafter is carried on, in part,  
26 within the Southern District of California, the conspiratorial acts herein alleged were carried on,  
27 in part, in the Southern District of California, and plaintiffs purchased title insurance in the  
28 Southern District of California.

1 **III. PARTIES**

2 **A. Plaintiffs**

3 13. Plaintiffs, Louis and Silvia Martinez, are individuals residing in Chula Vista,  
4 California. During the Class Period, plaintiffs purchased title insurance directly from one or  
5 more of the defendants herein and have been injured by reason of the antitrust violations  
6 alleged.

7 **B. Defendants**

8 14. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware  
9 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity  
10 National does business in California through one or more of its subsidiaries, including but not  
11 limited to, defendants Fidelity National Title Insurance Company, Ticor Title Insurance  
12 Company, Ticor Title Insurance Company of Florida, National Title Insurance of New York,  
13 Inc., Security Union Title Insurance Company, and Chicago Title Insurance Company. Fidelity  
14 National is registered to do business in California.

15 15. Defendant Fidelity National Title Insurance Company ("FNTIC") is a California  
16 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
17 32204. FNTIC does business in California, is a licensed title insurance company in California  
18 and is registered to do business in California.

19 16. Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation  
20 with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor  
21 does business in California, is a licensed title insurance company in California and is registered  
22 to do business in California.

23 17. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida  
24 corporation with its principle place of business at 601 Riverside Ave., Jacksonville Florida  
25 32204. TTICF does business in California, is a licensed title insurance company in California  
26 and is registered to do business in California.

27 18. Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri  
28 Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida

1 32204. Chicago Title does business in California, is a licensed title insurance company in  
2 California and is registered to do business in California.

3 19. Defendant National Title Insurance of New York, Inc. ("NTINY") is a New York  
4 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
5 32204. NTINY does business in California, is a licensed title insurance company in California  
6 and is registered to do business in California.

7 20. Defendant Security Union Title Insurance Company ("SUTIC") is a California  
8 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida  
9 32204. SUTIC does business in California, is a licensed title insurance company in California  
10 and is registered to do business in California.

11 21. The Fidelity family of title insurance companies (collectively, "Fidelity") —  
12 which includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and  
13 SUTIC, and their affiliates — is engaged in selling title insurance to purchasers of commercial  
14 and residential real estate throughout the United States, including California. Nationally,  
15 Fidelity accounts for approximately 27 percent of title premiums, which in 2006 amounted to  
16 roughly \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA  
17 (defined below) and since TIRSA's inception have charged title insurance rates in New York  
18 that TIRSA collectively sets.

19 22. The Fidelity family of title insurance companies and their affiliates are wholly-  
20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
21 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of  
23 title insurance companies engaged in the conduct challenged herein with the approval and assent  
24 of defendant Fidelity National

25 23. Defendant the First American Corporation ("First American") is a California  
26 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. First  
27 American does business in California through one or more of its subsidiaries, including but not  
28

1 limited to, defendants First American Title Insurance Company and United General Title  
2 Insurance Company.

3 24. Defendant First American Title Insurance Company ("FATIC") is a California  
4 corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC  
5 does business in California, is a licensed title insurance company in California and is registered  
6 to do business in California.

7 25. Defendant United General Title Insurance Company ("UGTIC") is a Colorado  
8 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC  
9 does business in California, is a licensed title insurance company in California and is registered  
10 to do business in California.

11 26. The First American family of title insurance companies (collectively, "First  
12 American") — which included defendants First American, FATIC and UGTIC, and their  
13 affiliates — is engaged in selling title insurance to purchasers of commercial and residential real  
14 estate throughout the United States, including California. Nationally, First American accounts  
15 for approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8  
16 billion. First American Title was a founding member of TIRSA and since TIRSA's inception  
17 has charged title insurance rates in New York that TIRSA collectively sets.

18 27. The First American family of title insurance companies and their affiliates are  
19 wholly-owned and controlled by defendant The First American Corporation. Through its  
20 subsidiaries, First American is a provider of title insurance, business information, and related  
21 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
22 American family of title insurance companies and their affiliates engaged in the conduct  
23 challenged herein with the approval and assent of defendant First American.

24 28. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
25 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
26 business in California through one or more of its subsidiaries, including but not limited to,  
27 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance  
28 Corporation and Transnation Title Insurance Company.



1           29. Defendant Commonwealth Land Title Insurance Company ("CLTIC") is a  
2 Pennsylvania corporation with its principle place of business at 5600 Cox Road, Glen Allen,  
3 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
4 California and is registered to do business in California.

5           30. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska  
6 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
7 LTIC does business in California, is a licensed title insurance company in California and is  
8 registered to do business in California.

9           31. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska  
10 corporation with its principle place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
11 TNTIC does business in California, is a licensed title insurance company in California and is  
12 registered to do business in California.

13           32. The LandAmerica family of title insurance companies (collectively  
14 "LandAmerica") — which included defendants LandAmerica, CLTIC, LTIC and TNTIC, and  
15 their affiliates — is engaged in selling title insurance to purchasers of commercial and  
16 residential real estate throughout the United States, including California. Nationally,  
17 LandAmerica accounts for approximately 19 percent of title premiums, which in 2006  
18 amounted to roughly \$3.15 billion. Commonwealth and Lawyers Title were founding members  
19 of TIRSA and since TIRSA's inception have charged title insurance rates in New York that  
20 TIRS collectively sets.

21           33. The LandAmerica family of title insurance companies and their affiliates are  
22 wholly-owned and controlled by defendant LandAmerica Financial Group, Inc. Through its  
23 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
24 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
25 LandAmerica had 2006 revenues of roughly \$4 billion. The Land America family of title  
26 insurance companies and their affiliates engaged in the conduct challenged herein with the  
27 approval of defendant LandAmerica.

28

1           34. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation  
2 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77069. STGC does business  
3 in California, is a licensed title insurance company in California and is registered to do business  
4 in California.

5           35. Defendant Stewart Title Insurance Company ("STIC") is a New York  
6 corporation with its principle place of business at 300 E. 42nd St., Floor 10, New York, NY  
7 10017. STIC does business in California, is a licensed title insurance company in California  
8 and is registered to do business in California.

9           36. The Stewart family of title insurance companies (collectively, "Stewart") —  
10 which includes defendants STGC and STIC, and its affiliates — is engaged in selling title  
11 insurance to purchasers of commercial and residential real estate throughout the United States  
12 and California. Nationally, Stewart accounts for approximately 12 percent of title premiums,  
13 which in 2006 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and  
14 since TIRSA's inception has charged title insurance rates in New York that TIRSA collectively  
15 sets.

16           37. Together, defendants account for more than 85 percent of the title premiums  
17 consumers pay in California. Nationally, they account for more than 85 percent of title  
18 premiums, which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages  
19 period, defendants charged California consumers in California virtually identical title insurance  
20 rates.

#### 21 **IV. OTHER ENTITIES**

22           38. TIRSA is a voluntary association of title insurers licensed as a rate service  
23 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains  
24 its offices in New York City, which until recently were located at the same New York address  
25 of Fidelity Title.

26           39. TIRSA annually compiles from its members statistical data relating to their title  
27 insurance premiums, losses and expenses and submits this information in aggregate form to the  
28 New York Insurance Department. TIRSA also prepares and submits the New York Title

1 Insurance Rate Manual which sets forth title rates to be charged and rules to be followed by  
2 TIRSA's members. The Insurance Department has never objected to any of the rates TIRSA has  
3 collectively set. Similarly, the California OIC has not actually held a public hearing or  
4 conducted any other review or regulation of the title insurance rates in California for thirty  
5 years.

6 40. TIRSA's membership is comprised of defendant insurers and all other title  
7 insurers that are licensed to issue policies in New York. Currently, Fidelity, First American,  
8 LandAmerica, and Stewart collectively represent 14 of TIRSA's 22 members. As such, they  
9 comprise a majority voting block which, according to TIRSA's by-laws, allows them to control  
10 the operations of TIRSA and, in particular, TIRSA's collective rate setting activity.

11 41. Various other persons, firms and corporations not made defendants herein have  
12 participated as co-conspirators with the defendants in the violations alleged herein and have  
13 performed acts and made statements in furtherance thereof.

#### 14 **V. CLASS ACTION ALLEGATIONS**

15 42. Plaintiffs bring this action under Rule 23, and particularly subsection (b)(3), of  
16 the Federal Rules of Civil Procedure, on behalf of themselves and a Class consisting of all  
17 persons excluding governmental entities, defendants, subsidiaries and affiliates of defendants,  
18 who purchased directly, from one or more of the defendants and/or their co-conspirators title  
19 insurance for residential and commercial property in California during the four year period  
20 preceding this lawsuit and who have sustained damages as a result of the conspiracy herein  
21 alleged. The number of potential Class members is so numerous that joinder is impracticable.

22 43. Plaintiffs, as representatives of the Class, will fairly and adequately protect the  
23 interest of the Class members. The interests of plaintiffs are coincident with, and not  
24 antagonistic to, those of the Class members.

25 44. Except as to amount of damages each member of the Class has by itself  
26 sustained, all other questions of fact and law are common to the class, including but not limited  
27 to, the combination and conspiracy hereinafter alleged, the violation of Section I of the Sherman  
28 Act (15 U.S.C. § 1) and the effects of such violation.

1           45. Plaintiffs, along with all other members of the Rule (b)(3) Class, were injured as  
2 a result of paying supracompetitive prices for title insurance in California. These  
3 supracompetitive prices were achieved as a result of defendants' illegal price-fixing activities  
4 and market allocation and division.

5           46. Members of the Class include hundreds of thousands, if not millions, of  
6 consumers. They are so numerous that their joinder would be impracticable.

7           47. Plaintiffs also bring this action as a class action under Rule 23(b)(2) of the  
8 Federal Rules of Civil Procedure, for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.  
9 The Rule (b)(2) Class included all members of the (b)(3) Class, and all consumers who are  
10 threatened with injury by the anticompetitive conduct detailed herein.

11           48. Defendants have acted, continued to act, refused to act and continued to refuse to  
12 act on ground generally applicable to the Rule (b)(2) Class, thereby making appropriate final  
13 injunctive relief with respect to the Rule (b)(2) Class as a whole.

14           49. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions,  
15 of consumers. They are so numerous that their joinder would be impracticable.

16           50. Common questions of law and fact exist with respect to all Class members and  
17 predominate over any questions solely affecting individual Class members. Among the  
18 questions of law or fact common to the class are the following:

- 19           • Whether defendants have engaged in the alleged illegal price-fixing  
20 activity and market allocation and division.
- 21           • The duration and scope of defendants' allege illegal price-fixing and  
22 market allocation and division activity.
- 23           • Whether defendants' alleged illegal price-fixing and market allocation  
24 and division has caused higher prices to plaintiffs and other purchasers of  
25 title insurance in California.
- 26           • Whether the Insurance Commissioner has actively supervised defendants'  
27 price fixing and market allocation and division.

28           51. Plaintiffs do not have any conflict of interest with other Class members.  
Plaintiffs' claims are typical of the claims of the Class and they will fairly and adequately  
reflect the interests of the Class. Counsel competent and experience in federal class action and  
federal antitrust litigation has been retained to represent the class.

1           52. This action is superior to any other method for the fair and efficient adjudication  
2 of this legal dispute since joinder of all members is not only impracticable, but impossible. The  
3 damages suffered by certain members of the Class are small in relation to the expense and  
4 burden of individual litigation and therefore it is highly impractical for such Class members to  
5 seek redress for damages resulting from defendants' anticompetitive conduct.

6           53. There will be no extraordinary difficulty in the management of the Class action.

7 **VI. TRADE AND COMMERCE**

8           54. During all or part of the period in suit, defendants and their co-conspirators were  
9 sellers of title insurance in California.

10           55. During the period in suit, the defendants sold substantial quantities of title  
11 insurance in a continuous and uninterrupted flow of interstate commerce. In 2005, consumers  
12 in the United States paid \$17 billion for residential title insurance policies.

13           56. During the period in suit, Class members from locations outside California  
14 purchased commercial or residential property and title insurance within California.

15           57. During the period in suit, the defendants were the major sellers of title insurance  
16 in the United States and California. Defendants controlled in excess of 85 percent of the market  
17 for title insurance in the United States and California.

18           58. The activities of the defendants and their co-conspirators, as described herein,  
19 were within the flow of interstate commerce and substantially affected interstate commerce.

20 **VII. FACTUAL ALLEGATIONS**

21 **A. The Nature of Title Insurance**

22           59. Title insurance is one of the most costly items associated with the closing of a  
23 real estate transaction. In California, rates for title insurance are based on a percentage of the  
24 total value of the property being insured. For residential properties, this price ranged in 2005  
25 from about \$1,010 (for \$250,000) property to \$1,490 (for a \$500,000 property). For more  
26 expensive homes and commercial properties, these prices are significantly higher. The amount  
27 spent on title insurance has risen dramatically over the past decade.  
28

1           60. Title insurance serves an important purpose. It protects the purchaser of a  
2 property from any unidentified defects in the title that would in any way interfere with the full  
3 and complete ownership and use of the property with the ultimate right to resell the property.  
4 Title insurance is required by lenders in most residential and commercial real estate  
5 transactions.

6           61. Consumers exercise little discretion in choosing the title insurer from which they  
7 purchase the insurance. That decision is typically made for them by their lawyer, mortgage  
8 brokers, lender, or realtor. Consequently, for most purchasers, the cost of title insurance is not  
9 challenged. Most consumers do not even become aware of the price they will pay and to which  
10 insurer they will pay it until the actual closing of the real estate transaction. By then it's too late,  
11 consumers can't attempt to negotiate a better title insurance price or alternate provider for fear of  
12 delaying or derailing the entire transaction. There is no shopping around. There is no  
13 negotiation of price.

14           62. This dynamic basically removes the sale of title insurance from the normal  
15 competitive process and any real competitive constraints, unlike the regular forces of supply and  
16 demand. The purchasers of the insurance, in most instances, are not the ones making the  
17 purchasing decisions. And, they are certainly in no position to question the price.

18           63. The most effective but illegal way for a particular title insurer to get business is  
19 to encourage those making the purchasing decisions — the real-estate middlemen — to steer  
20 business to that insurer. The best way to so motivate the middlemen is not through lower prices  
21 (that they are not even paying). Rather is it through kickbacks in the form of finder's fees, gifts,  
22 meals, business serviced and other financial enticements. Therefore, it is through higher pricing  
23 (which allows for generous inducements and kick-backs), not lower pricing, that provides the  
24 best way for title insurers to compete and increase their business.

25           **B. Price-Fixing in the Large Markets**

26           64. New York is one of the several states in which the leading title insurers  
27 collectively fix their prices through a rate-setting organization like TIRSA. There are two  
28



1 principal cost components that go into TIRSA's calculation. One comprises the risk associated  
2 with issuing the title policy. The other comprises the "agency commission" paid to title agents.

3 65. The risk component covers the risk the title insurer bears for any undiscovered  
4 defects in the title. Unlike property insurance, title insurance carries with it a very limited risk  
5 of loss to the insurer. That is because title insurance protects against unknown *prior* events that  
6 cause defects in title. With a proper search and examination of prior ownership records, any  
7 such defects can and almost always are readily identified and excluded from the policy's  
8 coverage. Consequently, the average claim payout on a title insurance policy in the United  
9 States amounts to only about 5 percent of the total premium collected. This is very different  
10 from property coverage (such as auto and home insurance) — which protects against *future*  
11 occurrences over which the insurer has little to no control — where the average claim payout  
12 amounts to about 80 percent of the total premium.

13 66. The "agency commissions" component of the title insurance rate covers  
14 payments made to title agents. Defendants have an ownership or management stake in many of  
15 the title agencies to which these payments are made. A small portion of the payments is for the  
16 search and exam of prior ownership records of the property being purchased to identify any  
17 liens, encumbrances, burdens, exclusions, or other defects in the title. The search and exam  
18 function does not involve the spreading or underwriting of risk, and title insurers typically  
19 outsource this task to title agents.

20 67. The remainder, and by far the bulk, of the agency commissions are comprised of  
21 costs unrelated to the issuance of title insurance. These costs include kickbacks and other  
22 financial inducements title insurers provide to title agents and indirectly (through title agents) to  
23 the lawyers, brokers, and lenders who, in reality, are the ones deciding which title insurer to use.  
24 These payments have nothing to do with the issuance of title insurance and are made by the title  
25 insurers merely to inflate their revenues and steer business their way.

26 68. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title  
27 insurance premium is based on the so-called "costs" associated with the payment of agency  
28 commission. Only 15 percent is based on costs associated with the risk of loss.

69. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate Manual. These rates are tied to the value of the property being insured. This is so despite the fact that the costs associated with agency commissions are entirely unrelated to the value of the property. Indeed, agency kickbacks and enticements have little to do with producing a particular title policy and provide no value — proportional to property value or otherwise — to the consumer. Even search and exam costs are unrelated to property value. They instead depend on the age of the property, the complexity of the ownership history, and the accessibility of prior ownership records.

70. There are other states in which the defendants overtly met and agreed to fix the rates for title insurance as part of a formal collective rate setting process.

### C. TIRSA's Formation

71. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal Trade Commission ("FTC") challenge to the collective rate setting activity of many of these associations. The FTC's challenge culminated in *FTC v. Tigor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of these rating bureaus must be actively supervised by the state.

72. In *Tigor*, the FTC focused its challenge on agency commissions. The FTC contended that the respective state insurance departments merely rubber-stamped this portion of the collectively fixed rates without any independent review or analysis of their reasonableness or cost justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to "exercise[] sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties." *Tigor*, 504 U.S. at 634-35.

73. Following the Supreme Court's instruction in *Tigor*, the Third Circuit on remand in *Tigor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the

1 collective rate-setting of certain state rating bureaus was improper because it was not actively  
2 supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed  
3 us that a state's rubber stamp is not enough. Active supervision requires the state regulatory  
4 authorities' independent review and approval." *Id.* at 1139.

5 74. Defendants formulated TIRSA's first rate manual and procedure soon after the  
6 Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme  
7 to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a  
8 single rate that comprises both risk and agency commission costs and by outsourcing to title  
9 agents the agency commission costs. In this way, defendants avoid providing the Insurance  
10 Department with any detailed breakout or backup for the bulk of the costs that make up their  
11 collectively fixed rates.

12 75. TIRSA merely submits an aggregated figure that is supposed to represent the  
13 total agency commission costs. Embedded with this figure is the vast quantity of dollars that are  
14 funneled to and through the title agencies as kickbacks, financial inducements and other costs  
15 unrelated to the issuance of title insurance. Defendants' design in all of this has been to  
16 effectively "hide" the cost basis for their artificially high and collectively fixed title insurance  
17 premiums from the regulatory scrutiny that *Ticor* demands.

18 **D. Lack of Regulatory Supervision and Authority in New York and**  
19 **Other States Including California**

20 76. There is no provision under the New York Insurance Law for TIRSA to include  
21 in its collectively fixed rates kickbacks and other agency commission payments unrelated to the  
22 issuance of title insurance. Indeed, the New York Insurance Department has openly  
23 acknowledged that it lacks the authority to review any agency commission payments. It has  
24 likewise recognized that defendants' outsourcing of agency commission costs has prevented it  
25 from performing a meaningful review of TIRSA's calculated rates. This was made clear at a  
26 November 2006 public hearing the New York Insurance Department held — the first in 15  
27 years — where it questioned TIRSA and its members on TIRSA's failure to provide the  
28 Insurance Department with any backup or detail for agency commissions.

1           77. At the hearing, the Insurance Department conceded that it could not properly  
2 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost  
3 information on agency commissions that TIRSA does not provide.

4           78. The Insurance Department's recognition that it is not properly supervising  
5 TIRSA's rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
6 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
7 regulation. The GAO studied the industry conditions of several states, including New York, and  
8 concluded that "state regulators have not collected the type of data, *primarily on title agents'*  
9 *costs and operations*, needed to analyze premium prices and underlying costs." (Emphasis  
10 added.)

11           79. Unchecked by regulatory review and insulated from competition, defendants  
12 have thus been able to collectively fix title insurance rates at supracompetitive levels and earn  
13 profits that vastly exceed those contemplated by the Insurance Department or that would have  
14 resulted in a free and open competitive market.

15           80. At the time of TIRSA's formation, the Insurance Department established 5  
16 percent (of the total premium) as the level of profit to which title insurers are entitled. The  
17 Insurance Department is supposed to carefully analyze TIRSA's rate calculations, and, in  
18 particular, its revenue and cost information, to ensure that this 5 percent profit level is  
19 maintained and based on a reasonable premium. However, without the authority or ability to  
20 scrutinize agency commission costs, the Insurance Department has been unable to perform this  
21 function. As a result, defendants (through TIRSA) have been able to set artificially high title  
22 premiums and secure title profits far in excess of the 5 percent threshold.

23           81. Through an independent investigation conducted over the past several years, the  
24 New York State Attorney General found that for every dollar of insurance premium defendants  
25 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is  
26 paid out in claims. And, of the roughly 85 cents that supposedly covers agency commissions,  
27 only between 8 and 11 cents goes to costs actually incurred by title agents in producing the title  
28

1 policy. These numbers show that title insurers' collectively fixed rates have resulted in profits  
2 that are untethered to and vastly exceed the costs of producing such policies.

3 82. The New York Attorney General's investigation further revealed that what was  
4 largely driving these numbers were the kickbacks and other financial inducements defendants  
5 were funneling to and through title agents to secure more business. As reported at the New  
6 York Insurance Department's 2006 hearing, one title agency's financial statements revealed that  
7 it spent more than \$1 million of these so-called "agency commissions" on items identified as  
8 "Christmas", "automobile expenses", "political contributions", "promotional expenses", and  
9 "travel and entertainment". These expenses are not even remotely related to the issuance of title  
10 insurance.

11 83. The Washington State Insurance Commissioner's October 2006 report found  
12 strikingly similar abuses in Washington. Violations were pervasive and the Commissioner  
13 concluded that consumers were paying too much as a result.

14 84. All of this "excess money" paid to title agents not only works to steer business to  
15 defendants. It also serves to boost defendants' own profits through the inflated revenues they  
16 obtain to cover these agency payments and through their ownership or management stake in  
17 many of these agencies.

18 85. Defendants are competitors in the sale of title insurance to consumers throughout  
19 the United States. These title insurers have agreed and engaged in concerted efforts to (i)  
20 collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in  
21 their calculated rates agency commission costs, (iii) embed within these costs payoffs,  
22 kickbacks, and other charges that are unrelated to the issuance of title insurance, and (iv) hide  
23 these supposed "costs" from regulatory scrutiny by funneling them to and through title agents  
24 over which the government agencies have no ability or authority to regulate.

25 86. The GAO in its 2007 report entitled "Actions Needed to Improve Oversight of  
26 the Title Insurance Industry and Better Protect Consumers" found several indicia of a lack of  
27 competition and questions about the reasonableness of prices including:  
28

- Consumers find it difficult to shop for title insurance, therefore, they put little pressure on insurers and agents to compete based on price;
- Title agents do not market to consumers, who pay for title insurance, but to those in the position to refer consumers to particular title agents, thus creating potential conflicts of interest;
- A number of recent investigations by HUD and state regulatory officials have indentified instances of alleged illegal activities with the title industry that appear to reduce price competition and could indicate excessive prices;
- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
- In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

87. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to verse title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws. In part, this situation has resulted from a lack of resources and limited coordination among different regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary penalty, and alternative title insurance models. [*Id.* at 41, footnotes omitted.]

**E. Competition Based on Kickbacks and Inducements But Not Rates**

88. Having agreed to fix or stabilize prices in New York and other states where they overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

89. In other words, as a direct result of these meetings where rates were agreed to, these same defendants agree, either expressly or tacitly, to not compete on rates in other states



1 as well. To compete on rates in other states could and would imperil their ability to maintain  
2 the agreed rate in states like New York.

3 90. As in the case in New York, a lack of regulatory authority over rates created an  
4 environment in which a conspiracy can and did succeed. No agency was examining why all the  
5 rates were virtually identical, and no agency was examining whether the costs associated with  
6 these premiums were reasonable. This is an environment which is conducive to price fixing.

7 91. In California, there is a lack of regulatory authority and oversight over title  
8 insurance companies. The rates in California are not set as part of a deliberate state intervention  
9 and the state does not and cannot meaningfully renew or approve these rates. The rates at issue  
10 in this case went into effect without review.

11 **F. Other Indicators of a Lack of Competition and Conditions**  
12 **Conducive to Collusive Rate Setting**

13 92. In addition to the uniformity of rates, other facts suggest that it is more plausible  
14 than not that rates have been set based on an agreement to fix prices.

15 93. In theory, the chain of title should be documented back to its historic grant of  
16 ownership centuries in the past. Fear about a possible title defect in the distant past is widely  
17 used as a justification by title agencies when convincing property buyers to purchase an owner  
18 policy in addition to the lender policy, which is mandatory to secure a mortgage. The title  
19 agency, however, saves much time and money when the search is limited to one or two  
20 transactions. They rely on the insurance policy to cover the remote chance of missing an earlier  
21 but still-valid claim. If such a claim is asserted and survives the scrutiny of the title insurance  
22 company's legal department, the expected cost of compensation is likely to be less than the sum  
23 of added overhead costs of routinely tracing back every chain of title to the earliest registered  
24 owner in the distant past.

25 94. Title insurance industry officials tend to justify the large proportion of the  
26 premium retained by the title abstract and settlement agency (from 60 to more than 90 percent)  
27 by the alleged high cost of title searching back into the distant past. In fact, a high proportion of  
28 noncommercial properties are searched only through the most recent transaction. No  
information is available as to what proportion of claims originate in the distant past. The

1 industry has never published pertinent statistics. It would have a marketing incentive to publish  
2 these statistics if the risk were significant; that it has not published these statistics indicates that  
3 the risk probably is only slightly greater than zero.

4 95. Many U.S. homes have been resold three or four times in twenty-five years. At  
5 each of these occasions, an abstract of title will be prepared on the basis of a more or less  
6 thorough review of the available title records, inheritance records, family records and records of  
7 past or current liens against a property. It is reasonable, therefore, to suspect that the risk of a  
8 title defect will decrease every time a property is sold.

9 96. Title searches have become less labor intensive, especially in large urban  
10 counties and cities. More and more of the information is available online. The statistical  
11 likelihood that a title default would be overlooked is a closely held industry secret, but it  
12 appears to be so small that many transactions are not insured on the basis of a search of the last  
13 owner's title history or a search into transactions that occurred during the last twenty-five to  
14 thirty-five years. The evidence is strong that the title insurance industry has achieved a  
15 remarkably high level of loss minimization.

16 97. Thus the costs of production have decreased as has the risk of loss yet none of  
17 these factors has resulted in price competition at the consumer level.

18 98. There is remarkable absence of rate changes by title insurers over the past five  
19 years, despite declining costs of production, increased number of transactions and increased  
20 revenue per transaction. During a period when costs per unit of production declined  
21 significantly, underwritten title companies and title insurers maintained excessive rates. The  
22 prices charged by title insurers and underwritten title companies were not and are not responsive  
23 to the changing costs of production or increasing revenue per transaction at a given set of rates.  
24 Again, this is indicia of an agreement not to compete based on price.

25 99. As noted, the title companies engage in illegal rebates and kickbacks where the  
26 title insurer or the underwritten title company provides money, free services or other things of  
27 value to a real estate agent, a lender or homebuilder in exchange for business referrals. These  
28 illegal rebates and kickbacks — a consequence of reverse competition — show that title

1 insurance rates are supra competitive and that some portion of the overcharge is passed from the  
2 underwritten title company or title insurer to the referrer of business.

3 100. A lack of competition and the ability to control prices is enhanced by the fact that  
4 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
5 title insurer groups declined as title insurers acquired other title insurers. There were few  
6 underwritten title company entrants over the 2000 to 2005 period and new entrants were  
7 controlled business arrangements whose addition to the market did not result in greater price  
8 competition.

9 101. Access to title plants can be a barrier to entry, but a larger barrier to entry exists  
10 due to the established relationships between the entities that can steer the consumer's title and  
11 escrow business and the entities who sell title insurance and escrow services.

12 102. The title insurance market is highly concentrated — a few title insurers account  
13 for the vast majority of title insurance sales — at both the statewide level and at the county level  
14 in California. For example, three title insurer groups account for 77.4% of the market at a  
15 statewide level. At the county level, each individual market was highly concentrated. The  
16 GAO found that First American and Fidelity had a market share of 66 percent. Such a  
17 concentration enhances the ability of companies to fix prices.

18 103. The agreement not to compete based on price is also evidenced by the fact that  
19 no company has marketed its services to consumers, the ultimate purchasers of the product.  
20 This is in marked contrast to real insurance, for example, car insurance, where the companies  
21 compete vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor,"  
22 or Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

## 23 **VIII. CLAIMS FOR RELIEF**

### 24 **COUNT I**

#### 25 **Violation of the Sherman Act**

26 104. Plaintiffs incorporate by reference the preceding allegations.

27 105. Beginning at least as early as March 2004, and continuing thereafter to the  
28 present, the exact dates being unknown to plaintiffs, defendants and their co-conspirators

1 engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate  
2 trade and commerce in violation of Section 1 of the Sherman Act.

3 106. The aforesaid combination and conspiracy has consisted of a continuing  
4 agreement, understanding and concert of action among the defendants and their co-conspirators,  
5 the substantial terms of which have been:

6 (a) to fix, raise, maintain and stabilize the price of title insurance throughout  
7 California;

8 (b) to fix, raise, maintain and stabilize the terms and conditions of sale of title  
9 insurance in California; and

10 (c) to allocate and divide the market for title insurance in California.

11 107. In the absence of proper regulatory authority and oversight, defendants' conduct  
12 constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to  
13 allocate and divide the title insurance market in California and is a *per se* violation of Section I  
14 of the Sherman Act.

15 108. Defendants' price-fixing, market allocation and division activity has been  
16 continuous throughout the relevant damages period and has been renewed and reinforced  
17 annually through submissions to the OIC of supposed cost and revenue information and its  
18 periodic submissions of rate changes.

19 109. Through their collective price-fixing, market allocation and division and  
20 manipulation of the regulatory process, defendants have harmed competition by charging  
21 consumers supra competitive prices for title insurance in California, evidenced in part by the  
22 fact that the prices are uniformly higher than compared with the cost of providing the insurance.

23 110. The aforesaid combination and conspiracy has had the following effects among  
24 others:

25 (a) price competition in the sale of title insurance has been suppressed,  
26 restrained and eliminated;

27 (b) prices for title insurance have been raised, fixed, maintained and  
28 stabilized at artificially high and non-competitive levels; and

1 (c) purchasers of title insurance have been deprived of the benefit of free and  
2 open competition.

3 111. During the period of the antitrust violations by defendants and their co-  
4 conspirators, plaintiffs and each member of the Class they represent, have purchased title  
5 insurance and, by reason of the antitrust violations herein alleged, paid more for such than they  
6 would have paid in the absence of said antitrust violations. As a result, plaintiffs and each  
7 member of the Class they represent, have been injured and damaged in an amount presently  
8 undetermined.

9 **COUNT II**

10 **Violation of Cal. Bus. and Prof. Code § 16720, *et seq.***

11 112. Plaintiffs incorporate by reference the preceding allegations.

12 113. Defendants' conduct as set forth above is in violation of the Cartwright Act of  
13 California (Cal. Bus. & Prof. Code § 16720, *et seq.*).

14 114. As a direct result of defendants' unlawful acts plaintiffs have paid artificially  
15 inflated prices for title insurance and have suffered injury to their business and property.

16 **COUNT III**

17 **Violation of Cal. Bus. And Prof. Code § 17200, *et seq.***

18 115. The preceding paragraphs of this Complaint are realleged and incorporated by  
19 reference. Plaintiffs assert this claim for violations of California's UCL, Bus. & Prof. Cod §  
20 17200, *et seq.*, on behalf of themselves and the members of the Class.

21 116. Defendants' statements and representations constitute unfair, unlawful and  
22 deceptive trade practices in violation of the UCL.

23 117. All of the wrongful conduct alleged herein occurs and continues to occur in the  
24 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or  
25 generalized course of conduct that is repeated in the State of California on hundreds, if not  
26 thousands, of occasions daily.

119. Plaintiffs request that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing their unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

## Unjust Enrichment

126. As a result of defendants' unjust enrichment, plaintiffs and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

WHEREFORE, plaintiffs demand:



1 A. That the alleged combination and conspiracy among the defendants and their co-  
2 conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of  
3 Section 1 of the Sherman Act;

4 B. That the Court declare that the premiums charged are excessive under state law  
5 and order damages;

6 C. That judgment be entered against defendants, jointly and severally, and in favor  
7 of plaintiffs, and each member of the Class they represent, for threefold the damages determined  
8 to have been sustained by plaintiffs, and each member of the Class they represent, together with  
9 the cost of suit, including a reasonable attorneys' fee;

10 D. Each of the defendants, successors, assignees, subsidiaries and transferees, and  
11 their respective officers, directors, agents and employees, and all other persons acting or  
12 claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained  
13 from, in any matter, directly or indirectly, continuing, maintaining or renewing the aforesaid  
14 combination, conspiracy, agreement, understanding or concert of action, adopting or following  
15 any practice, plan, program, or design having a similar purpose or effect in restraining  
16 competition; and

17 E. Such other and further relief as may appear necessary and appropriate.

18 **JURY TRIAL DEMAND**

19 Pursuant to Rule 38, F.R.C.P., plaintiffs demand a trial by jury of the claims alleged herein.

20 DATED: March 18, 2008

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Martinez

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 148885 - SH  
\* \* C O P Y \* \*  
March 18, 2008  
11:33:34**

**Civ Fil Non-Pris**

USAO #: 08CV0499

Judge.: M. JAMES LORENZ

Amount.:

\$350.00 CK

Check#: BC5842

**Total-> \$350.00**

**FROM: MARTINEZ V. FIDELITY NAT'L  
FINANCIAL INC**

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Louis Martinez  
Silvia Martinez

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen R. Bassar, John L. Haeussler, Barrack, Rodos & Bacine,  
402 West Broadway, Suite 850, San Diego, CA 92101 (619)230-0800

## DEFENDANTS

Fidelity National Financial, Inc., Fidelity National Title Insurance Company, (list continues on Attachment A to Civil Cover Sheet)

County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. BY: JP DEPUTY

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause: Class action for violation of the antitrust laws pursuant to Section 1 of the Sherman Act; violation of California Bus. and Prof. Code and Unjust Enrichment 15 U.S.C. § 1526

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/18/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

148885 \$ 350

See 3/18/08

CR

# **EXHIBIT 6**

FILED

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 Lisa J. Yang (SBN 208971)  
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Counsel for Plaintiffs,

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION**

VINCENT LEON DAVIS, individually  
 and on behalf of all others similarly  
 situated,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL,  
 INC., FIDELITY NATIONAL TITLE  
 INSURANCE COMPANY, TICOR  
 TITLE INSURANCE COMPANY,  
 TICOR TITLE INSURANCE  
 COMPANY OF FLORIDA, CHICAGO  
 TITLE INSURANCE COMPANY,

Case No. **CV08-01897****CLASS ACTION COMPLAINT****JURY TRIAL DEMANDED**



1 NATIONAL TITLE INSURANCE OF  
 2 NEW YORK, INC., SECURITY  
 3 UNION TITLE INSURANCE  
 4 COMPANY, THE FIRST AMERICAN  
 5 CORPORATION, FIRST  
 6 AMERICANTITLE INSURANCE  
 7 COMPANY, UNITED  
 8 GENERALTITLE INSURANCE  
 9 COMPANY, LANDAMERICA  
 10 FINANCIAL GROUP, INC.,  
 11 COMMONWEALTH LAND TITLE  
 12 INSURANCE COMPANY, LAWYERS  
 13 TITLE INSURANCE  
 14 CORPORATION, TRANSNATION  
 15 TITLE INSURANCE COMPANY,  
 16 STEWART TITLE GUARANTY  
 17 COMPANY and STEWART TITLE  
 18 INSURANCE COMPANY

19 Defendants.

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20 Plaintiff, ("Plaintiff") by his attorneys, on behalf of himself and all others  
 21 similarly situated, hereby seek treble damages, other monetary relief and injunctive  
 22 relief for defendants' violations of United States and California antitrust laws  
 23 alleging as follows:

## 24 I. INTRODUCTION

25 1. The purpose of title insurance is to protect the buyer against  
 26 previously undiscovered title defects which may encumber the use, enjoyment or  
 27 transfer of the property. Title insurers do not guarantee a clean title but rather  
 28 safeguard the policyholder against title defects found after the property has been  
 transferred. Therefore, the only protection afforded to the insured concerns the  
 highly unlikely event that an undetected title deficiency existed prior to the time  
 the policy was issued.

2. Consumers often find themselves in unfamiliar territory when it comes  
 to title insurance. The majority of homebuyers are overwhelmed by the

1 tremendous amount of paperwork that is flashed before their eyes during the  
2 closing process of a home purchase. They generally walk away from the closing  
3 without any understanding of their title insurance policy. There is a marked  
4 contrast between title insurance and traditional life, automotive and homeowner  
5 insurance policies that are marketed to consumers.

6       3. Title companies do not engage in direct to consumer marketing.  
7 Instead, the title insurance industry operates on what is termed a "reverse  
8 competition" model. Reverse competition means that title insurers solicit business  
9 referrals from the other major players in the home purchase scenario – real estate  
10 agents and agencies, banks, lenders, builders, developers and other middlemen or  
11 go-betweens who are in the best position to influence buyers. Indeed, buyers  
12 typically defer, often unknowingly, to their lender, builder, real estate agent or  
13 representative to select a title company. These middlemen act on behalf of the title  
14 insurance companies in return for receiving kickbacks and other financial  
15 incentives. Insurance consumers, in most cases, are effectively removed from the  
16 decision-making process and assigned a policy. The title insurance industry  
17 operates on an inherently corrupt system that eliminates competition based on the  
18 services and policies rendered. In fact, their rates and policy structures are  
19 primarily dictated through publications created by their national trade association,  
20 the American Land Title Association.

21       4. Reverse competition, as the term suggests, isn't a model that benefits  
22 consumers through market-driven forces. In fact, consumers are bypassed  
23 completely as title companies spend nearly all of their marketing budgets "winning  
24 and dining" real estate agents, lenders, builders, developers and others in an effort  
25 to convince these middlemen to steer their home-buying clients to their companies  
26 for their title insurance needs.

27       5. The California title insurance market is dominated by four groups of  
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1 affiliated companies which control over 90 percent of the policies sold in the state.  
2 In addition, these powerful groups own and control a majority of California title  
3 plants that virtually every title insurer uses to issue title policies.

4 6. Title insurers have industry meetings where they set rates that are  
5 ultimately filed and frequently rubberstamped by the applicable state insurance  
6 agency. The title insurance companies, in their respective markets, collectively  
7 come to an agreement on a set price that in no manner accounts for their miniscule  
8 risk exposure or the nature of the property being insured. They are able to  
9 essentially regulate themselves and eliminate any competition in the consumer  
10 market. As a result of the joint agreement as to rates, the courting of middlemen  
11 through financial rewards is the only aspect of title insurance business that is  
12 competitive.

13 7. Having agreed to fix prices in states where joint rate setting occurs, the  
14 companies agreed to not compete based on price to the consumer in other states,  
15 including California, where regulation of filed rates is lax or non-existent. Thus,  
16 they agreed to set rates at supracompetitive prices and to compete based on  
17 offering inducements to middlemen. In California, in three successive reports, the  
18 Office of the Insurance Commissioner ("OIC") has found an "astonishing number"  
19 of such inducements that are in violation of state law. However, the OIC does not  
20 actively oversee or regulate rates, and, in fact, does not by its own admission have  
21 the power to do so. The absence of regulation has allowed collusive behavior and  
22 excessive rates.

23 8. In addition to paying inducements and kickbacks, the title companies  
24 and their agents divide the market of real-estate middlemen through the use of  
25 Affiliated Business Arrangements ("ABAs"), wherein the dominant real estate  
26 brokers purchase significant ownership stakes in favored title insurance affiliates.  
27 The real estate brokers then reward their associates for using the preferred title  
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1 insurance providers and lock out independent title insurers.

2 9. In this action, plaintiff, on behalf of a Class of those purchasing title  
3 insurance in California, seek damages arising from defendants' violations of the  
4 Sherman Act as well as California statutory law.

## 5 II. JURISDICTION AND VENUE

6 10. Plaintiff and class members bring this action to recover monetary  
7 damages, including treble damages, and to obtain injunctive relief, costs of suit,  
8 and reasonable attorneys' fees arising from the defendants' violations of Section 1  
9 of the Sherman Act (15 U.S.C. § 1).

10 11. This Court has jurisdiction over this action pursuant 28 U.S.C. §§  
11 1331, 1337(a) and 1367.

12 12. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15  
13 and 22, and 28 U.S.C. § 1391 (b) and (c), in that defendants maintain offices,  
14 conduct business or are found within this judicial district.

## 15 III. PARTIES

### 16 A. Plaintiff

17 13. Plaintiff, Vincent Leon Davis, is an individual residing in Los Angeles  
18 County, California. During the class period, plaintiff purchased title insurance  
19 directly from one or more defendants herein and was injured by the unlawful  
20 conduct alleged in this complaint.

### 21 B. Defendants

22 14. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a  
23 Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville,  
24 Florida 32204. Fidelity National does business in California through one or more  
25 of its subsidiaries, including but not limited to, defendants Fidelity National Title  
26 Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance  
27 Company of Florida, National Title Insurance of New York, Inc., Security Union  
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1 Title Insurance Company, and Chicago Title Insurance Company. Fidelity  
2 National is registered to do business in California.

3 15. Defendant Fidelity National Title Insurance Company ("FNTIC") is a  
4 California Corporation with its principal place of business at 601 Riverside Ave.,  
5 Jacksonville, Florida 32204. FNTIC does business in California, is a licensed title  
6 insurance company in California and is registered to do business in California.

7 16. Defendant Ticor Title Insurance Company ("Ticor") is a California  
8 Corporation with its principal place of business at 601 Riverside Ave.,  
9 Jacksonville, Florida 32204. Ticor does business in California, is a licensed title  
10 insurance company in California and is registered to do business in California.

11 17. Defendant Ticor Title Insurance Company of Florida ("TTICF") is a  
12 Florida corporation with its principal place of business at 601 Riverside Ave.,  
13 Jacksonville, Florida 32204. TTICF does business in California, is a licensed title  
14 insurance company in California and is registered to do business in California.

15 18. Defendant Chicago Title Insurance Company ("Chicago Title") is a  
16 Missouri Corporation with its principal place of business at 601 Riverside Ave.,  
17 Jacksonville, Florida 32204. Chicago Title does business in California, is a  
18 licensed title insurance company in California and is registered to do business in  
19 California.

20 19. Defendant National Title Insurance of New York, Inc. ("NTINY") is a  
21 New York corporation with its principal place of business at 601 Riverside Ave.,  
22 Jacksonville, Florida 32204. NTINY does business in California, is a licensed title  
23 insurance company in California and is registered to do business in California.

24 20. Defendant Security Union Title Insurance Company ("SUTIC") is a  
25 California corporation with its principal place of business at 601 Riverside Ave.,  
26 Jacksonville, Florida 32204. SUTIC does business in California, is a licensed title  
27 insurance company in California and is registered to do business in California.  
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21. The Fidelity family of title insurance companies (collectively, "Fidelity") – which includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC, and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including California. Nationally, Fidelity accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below) and since TIRSA's inception have charged title insurance rates in New York that TIRSA collectively sets.

22. The Fidelity family of title insurance companies and their affiliates are wholly-owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance, and claims management services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title insurance companies engaged in the conduct challenged herein with the approval and assent of defendant Fidelity National.

23. Defendant The First American Corporation ("First American") is a California corporation with its headquarters at 1<sup>ST</sup> American Way, Santa Ana, California 92707. First American does business in California through one or more of its subsidiaries, including but not limited to, defendants First American Title Insurance Company and United General Title Insurance Company.

24. Defendant First American Title Insurance Company ("FATIC") is a California corporation with its headquarters at 1st American Way, Santa Ana, California 92707. FATIC does business in California, is a licensed title insurance company in California and is registered to do business in California.

25. Defendant United General Title Insurance Company ("UGTIC") is a Colorado corporation located at 8310 S. Valley Highway, Suite 130, Englewood,



1 CO 80112. UGTIC does business in California, is a licensed title insurance  
2 company in California and is registered to do business in California.

3 26. The First American family of title insurance companies (collectively,  
4 "First American") – which includes defendants First American, FATIC and  
5 UGTIC, and their affiliates – is engaged in selling title insurance to purchasers of  
6 commercial and residential real estate throughout the United States, including  
7 California. Nationally, First American accounts for approximately 29 percent of  
8 title premiums, which in 2006 amounted to roughly \$4.8 billion. First American  
9 Title was a founding member of TIRSA and since TIRSA's inception has charged  
10 title insurance rates in New York that TIRSA collectively sets.

11 27. The First American family of title insurance companies and their  
12 affiliates are wholly-owned and controlled by defendant The First American  
13 Corporation. Through its subsidiaries, First American is a provider of title  
14 insurance, business information, and related products and services. First American  
15 had 2006 revenues of roughly \$8.5 billion. The First American family of title  
16 insurance companies and their affiliates engaged in the conduct challenged herein  
17 with the approval and assent of defendant First American.

18 28. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a  
19 Virginia corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060.  
20 Land America does business in California through one or more of its subsidiaries,  
21 including but not limited to, defendants Commonwealth Land Title Insurance  
22 Company, Lawyers Title Insurance Corporation and Transnation Title Insurance  
23 Company.

24 29. Defendant Commonwealth Land Title Insurance Company ("CLTIC")  
25 is a Pennsylvania corporation with is principal place of business at 5600 Cox Road,  
26 Glen Allen, Virginia 23060. CLTIC does business in California, is a licensed title  
27 insurance company in California and is registered to do business in California.  
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30. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska corporation with its principal place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does business in California, is a licensed title insurance company in California and is registered to do business in California.

31. Defendant Transnation Title Insurance Company ("TNTIC") is a Nebraska corporation with its principal place of business at 5600 Cox Road, Glen Allen, Virginia 23060. TNTIC does business in California, is a licensed title insurance company in California and is registered to do business in California.

32. The LandAmerica family of title insurance companies (collectively, "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including California. Nationally, LandAmerica accounts for approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion. Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA's inception have charged title insurance rates in New York that TIRSA collectively sets.

33. The LandAmerica family of title insurance companies and their affiliates are wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its subsidiaries, LandAmerica is a provider of title insurance and other products and services that facilitate the purchase, sale, transfer, and financing of residential and commercial real estate. LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance companies and their affiliates engaged in the conduct challenged herein with the approval of defendant LandAmerica.

34. Defendant Stewart Title Guaranty Company ("STGC") is a Texas corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in California, is a licensed title insurance company in

1 California and is registered to do business in California.

2 35. Defendant Stewart Title Insurance Company ("STIC") is a New York  
3 corporation with its principal place of business at 300 E. 42nd St., Floor 10, New  
4 York, NY 10017. STIC does business in California, is a licensed title insurance  
5 company in California and is registered to do business in California.

6 36. The Stewart family of title insurance companies (collectively,  
7 "Stewart") – which includes defendants STGC and STIC, and its affiliates – is  
8 engaged in selling title insurance to purchasers of commercial and residential real  
9 estate throughout the United States and California. Nationally, Stewart accounts  
10 for approximately 12 percent of title premiums, which in 2006 amounted to  
11 roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA's  
12 inception has charged title insurance rates in New York that TIRSA collectively  
13 sets.

14 37. Together, defendants account for more than 85 percent of the title  
15 premiums consumers pay in California. Nationally, they account for more than 85  
16 percent of title premiums, which in 2006 amounted to roughly \$14.5 billion.  
17 Throughout the relevant damages period, defendants charged California consumers  
18 in California virtually identical title insurance rates.

#### 19 IV. OTHER ENTITIES

20 38. TIRSA is a voluntary association of title insurers licensed as a rate  
21 service organization pursuant to Article 23 of the State of New York Insurance  
22 Law. TIRSA maintains its offices in New York City, which until recently were  
23 located at the same New York address of Fidelity Title.

24 39. TIRSA annually compiles from its members statistical data relating to  
25 their title insurance premiums, losses and expenses and submits this information in  
26 aggregate form to the New York Insurance Department. TIRSA also prepares and  
27 submits the New York Title Insurance Rate Manual which sets forth title rates to  
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1 be charged and rules to be followed by TIRSA's members. The Insurance  
2 Department has never objected to any of the rates TIRSA has collectively set.  
3 Similarly, the California OIC has not actually held a public hearing or conducted  
4 any other review or regulation of the title insurance rates in California for thirty  
5 years.

6 40. TIRSA's membership is comprised of defendant insurers and all other  
7 title insurers that are licensed to issue policies in New York. Currently, Fidelity,  
8 First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22  
9 members. As such, they comprise a majority voting block which, according to  
10 TIRSA's by-laws, allows them to control the operations of TIRSA and, in  
11 particular, TIRSA's collective rate setting activity.

12 41. Various other persons, firms and corporations not made defendants  
13 herein have participated as co-conspirators with the defendants in the violations  
14 alleged herein and have performed acts and made statements in furtherance  
15 thereof.

## 16 V. CLASS ACTION ALLEGATIONS

17 42. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of  
18 Civil Procedure, particularly Rule 23(b)(3), on behalf of himself and the following  
19 class (the "Class"):

20 All persons who purchased title insurance directly from  
21 one or more of the defendants and/or their co-  
22 conspirators for residential and commercial property in  
23 California during the four year period preceding this  
24 lawsuit. Excluded from the Class are defendants, their  
25 parent companies, subsidiaries and affiliates, government  
26 entities and judges or justices assigned to hear any aspect  
27 of this case.  
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1        43. Plaintiff does not currently know the exact number and identities of  
2 class members but such information is known by defendants and is ascertainable  
3 through appropriate discovery. Plaintiff believes that the number of potential class  
4 members is so numerous that joinder is impracticable.

5        44. Plaintiff's claims are typical of the Class because all members of the  
6 Class are direct purchasers of title insurance, injured in the same manner by the  
7 same wrongful conduct of defendants, and seek relief that is common to the Class.  
8 The questions of law and fact common to the Class members predominate over any  
9 questions which may affect only individual members.

10       45. Plaintiff will fairly and adequately represent the interests of the Class  
11 in that plaintiff is a direct purchaser of title insurance during the relevant damage  
12 period and has no conflict with any other members of the Class. Furthermore,  
13 plaintiff has retained competent counsel experienced in antitrust class action  
14 litigation.

15       46. Plaintiff, along with other members of the Rule 23(b)(3) Class, was  
16 injured as a result of paying supracompetitive prices for title insurance in  
17 California. These supracompetitive prices were achieved as a result of defendants'  
18 illegal price-fixing activities and market allocation and division.

19       47. Members of the (b)(3) Class include hundreds of thousands, if not  
20 millions, of consumers. They are so numerous that their joinder would be  
21 impracticable.

22       48. Plaintiff also brings this action as a class action under Rule 23(b)(2) of  
23 the Federal Rule of Civil Procedure, which includes all members of the 23(b)(3)  
24 Class, and all consumers who are threatened with injury by the anticompetitive  
25 conduct detailed herein.

26       49. Defendants have acted, continued to act, refused to act and continued  
27 to refuse to act on grounds generally applicable to the Rule 23(b)(2) Class, thereby  
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1 making appropriate final injunctive relief with respect to the Rule 23(b)(2) Class as  
2 a whole.

3 50. Members of the Rule 23(b)(2) Class include hundreds of thousands, if  
4 not millions, of consumers. They are so numerous that their joinder would be  
5 impracticable.

6 51. Among the questions of law and fact common to the Class are:

7 (a) Whether defendants have engaged in the alleged illegal price-  
8 fixing activity and market allocation and division;

9 (b) The duration and scope of defendants' alleged illegal price-  
10 fixing and market allocation and division activity;

11 (c) Whether defendants' alleged illegal price-fixing and market  
12 allocation and division has caused higher prices to plaintiff and  
13 other purchasers of title insurance in California; and

14 (d) Whether plaintiff and the other class members are entitled to,  
15 among other things, injunctive relief, and if so, the nature and  
16 extent of such injunctive relief.

17 52. A class action is superior to other available methods for the fair and  
18 efficient adjudication of this controversy. The prosecution of duplicative litigation  
19 by individual Class members would create an unnecessary risk of inconsistent or  
20 varying adjudications potentially leading to the establishment of incompatible  
21 standards of conduct for defendants. The Class is readily definable and the  
22 prosecution as a class action provides the only adequate means of redress for  
23 otherwise diminutive claims that could not reasonably support the expense of an  
24 individual litigation.

## 25 VI. TRADE AND COMMERCE

26 53. During the Class period, each defendant and their co-conspirators sold  
27 title insurance in California and in a continuous and uninterrupted flow of  
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interstate commerce

54. During the Class period, defendants collectively dominated the title insurance market. Title insurance consumers in the United States paid an estimated \$17 billion for residential title insurance in 2005.

55. During the Class period, defendants dominated over 85% of the title insurance market in California and the United States.

56. During the Class period, Class members outside of California purchased residential or commercial title insurance within the State of California.

57. The business activities of the defendants and their co-conspirators were within the flow of interstate commerce and substantially affected interstate commerce in the United States.

## VII. FACTUAL ALLEGATIONS

### A. The Nature of Title Insurance

58. In California, title insurance rates are based on a percentage of the total value of the property being insured. For example, a California residential property that was sold for \$500,000 would have cost the buyer approximately \$1,500 for title insurance in 2005.

59. Consumers are required to purchase title insurance when they take possession of property. Mortgage loans will not be approved without the security of a title insurance policy. Title companies perform extensive research to identify any defects that may encumber a property before it is transferred to an owner. Title insurance is a necessary commodity that protects an owner from defects that existed, but were not identified by the title company, prior to their settlement.

60. Title insurance companies operate their business on the premise that consumers are generally uninformed or unaware of all matters concerning title insurance. Buyers are generally not presented, at any time, with an opportunity to make an independent decision regarding any aspect of their property title. In most

1 cases, the buyer is not aware that they have a choice when it comes to selecting a  
2 title company. Even a sophisticated buyer, however, is powerless at the bargaining  
3 table because title companies have eliminated competition from the market. The  
4 unregulated, fixed rate charged for title insurance is not, by any reasonable  
5 evaluation, commensurate with the associated risks assumed and the services  
6 rendered.

7       61. The title insurer bears a statistically minimal risk for undetected title  
8 defects that existed prior to the transfer of property. A competent review of the  
9 previous ownership history should reveal any encumbrances, liens, exclusions, or  
10 other defects in the title which are excluded from the insured's policy. The  
11 information necessary to identify title deficiencies is readily available and highly  
12 dependable. The extent of the search itself is dependant on a number of factors  
13 including the earliest recorded age of the property, the number of transfers, and the  
14 integrity and accessibility of ownership records. The complexity of the title  
15 company's research and review process is unrelated to the value of the property or  
16 rate charged to the insured. Indeed, the national average recovery for a claim on a  
17 title insurance policy is approximately 5% of the total premium. On the other  
18 hand, the national average for property insurance is approximately 80% of the total  
19 premium collected.

20       62. The most effective, but illegal, way for a particular title insurer to get  
21 business is to encourage those making the purchasing decisions – the real-estate  
22 middlemen – to steer business to that insurer. The best way to so motivate the  
23 middlemen is not through lower prices (that they are not even paying). Rather, it is  
24 through kickbacks in the form of finder's fees, gifts, meals, business services and  
25 other financial enticements. Therefore, it is through higher pricing (which allows  
26 for generous inducements and kickbacks), not lower pricing that provides the best  
27 way for title insurers to compete and increase their business.  
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63. New York is one of several states in which the leading title insurers collectively fix their prices through a rate-setting organization like TER.SA. There are two principal cost components that go into TIRSA's calculation. One comprises the risk associated with issuing the title policy. The other comprises the "agency commissions" paid to title agents.

64. The risk component covers the risk the title insurer bears for any undiscovered defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of loss to the insurer. That is because title insurance protects against unknown prior events that cause defects in title. With a proper search and examination of prior ownership records, any such defects can and almost always are readily identified and excluded from the policy's coverage. Consequently, the average claim payout on a title insurance policy in the United States amounts to only about 5 percent of the total premium collected. This is very different from property coverage (such as auto and home insurance) — which protects against future occurrences over which the insurer has little to no control — where the average claim payout amounts to about 80 percent of the total premium.

65. The "agency commissions" component of the title insurance rate covers payments made to title agents. Defendants have an ownership or management stake in many of the title agencies to which these payments are made. A small portion of these payments is for the search and exam of prior ownership records of the property being purchased to identify any liens, encumbrances, burdens, exclusions, or other defects in the title. The search and exam function does not involve the spreading or underwriting of risk, and title insurers typically outsource this task to title agents.

66. The remainder, and by far the bulk, of the agency commissions are comprised of costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial inducements title insurers provide to title agents and

1 indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality,  
2 are the ones deciding which title insurer to use. These payments have nothing to do  
3 with the issuance of title insurance and are made by title insurers merely to inflate  
4 their revenues and steer business their way.

5 67. Under TIRSA's collective rate setting regime, roughly 85 percent of  
6 the total title insurance premium is based on the so-called "costs" associated with  
7 the payment of agency commissions. Only 15 percent is based on costs associated  
8 with the risk of loss.

9 68. TIRSA publishes its final calculated title rates in the New York Title  
10 Insurance Rate Manual. These rates are tied to the value of the property being  
11 insured. This is so despite the fact that the costs associated with agency  
12 commissions are entirely unrelated to the value of the property. Indeed, agency  
13 kickbacks and enticements have little to do with producing a particular title policy  
14 and provide no value – proportional to property value or otherwise – to the  
15 consumer. Even search and exam costs are unrelated to property value. They  
16 instead depend on the age of the property, the complexity of the ownership history,  
17 and the accessibility of prior ownership records.

18 69. There are other states in which the defendants overly meet and agree  
19 to fix the rates for title insurance as part of a formal collective rate setting process.

## 20 **B. TIRSA's Formation**

21 70. Prior to TIRSA, the New York Board of Title Underwriters  
22 ("NYBTU") served as the title insurance rate-setting body in New York. NYBTU,  
23 along with the title insurance rate setting bureaus in many other states, was  
24 disbanded in the mid-1980s in the wake of a Federal Trade Commission ("FTC")  
25 challenge to the collective rate setting activity of many of these associations. The  
26 FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992),  
27 where the Supreme Court held that to avoid per se illegal price-fixing liability, the  
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1 rate setting activity of these rating bureaus must be actively supervised by the state.

2 71. In Tigor, the Supreme Court ruled that the rate establishing entities  
3 within the individual states must be overseen and regulated by the state to avoid  
4 per se price-fixing in violation of the Sherman Act. The Court found that the  
5 respective state insurance departments failed to perform an independent review of  
6 the title insurance industry's self-proclaimed fixed rates to determine their  
7 reasonableness. It was held that the state insurance department must "exercise  
8 sufficient independent judgment and control so that the details of the rates or prices  
9 have been established as a product of deliberate state intervention, not simply by  
10 agreement among private parties." Tigor, 504 U.S. at 634-35.

11 72. The Third Circuit, reviewing Tigor on remand, concurred with the  
12 FTC's finding that the collective rate-setting of certain state rating bureaus was  
13 improper because it was not actively supervised by the state. The court wrote,  
14 "[t]he Supreme Court plainly instructed us that a state's rubber stamp is not  
15 enough. Active supervision requires the state regulatory authorities' independent  
16 review and approval." Tigor Title Ins. Co. v. FTC, 998 F.2d 1129, 1139 (3d Cir.  
17 1992).

18 73. Defendants implemented a counter maneuver designed to circumvent  
19 the Supreme Court's ruling in Tigor. Through TIRSA, defendants have set up a  
20 rate-setting scheme to get around the rigors of state oversight required by Tigor.  
21 They have done so by calculating a single rate that comprises both risk and agency  
22 commission costs and by outsourcing to title agents the agency commission costs.  
23 In this way, defendants avoid providing the Insurance Department with any  
24 detailed breakout or backup for the bulk of the costs that make up their collectively  
25 fixed rates.

26 74. TIRSA merely submits an aggregated figure that is supposed to  
27 represent the total agency commission costs. Embedded within this figure is the  
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1 vast quantity of dollars that are funneled to and through the title agencies as  
2 kickbacks, financial inducements and other costs unrelated to the issuance of title  
3 insurance. Defendants' design in all of this has been to effectively "hide" the cost  
4 basis for their artificially high and collectively fixed title insurance premiums from  
5 the regulatory scrutiny that Ticor demands.

6 **C. Lack of Regulatory Supervision and Authority in New York**  
7 **and Other States Including California**

8 75. There is no provision under the New York Insurance Law for TIRSA  
9 to include in its collectively fixed rates kickbacks and other agency commission  
10 payments unrelated to the issuance of title insurance. Indeed, the New York  
11 Insurance Department has openly acknowledged that it lacks the authority to  
12 review any agency commission payments. It has likewise recognized that  
13 defendants' outsourcing of agency commission costs has prevented it from  
14 performing a meaningful review of TIRSA's calculated rates. This was made clear  
15 at a November 2006 public hearing the New York Insurance Department held – the  
16 first in 15 years – where it questioned TIRSA and its members on TIRSA's failure  
17 to provide the Insurance Department with any backup or detail for agency  
18 commissions.

19 76. At the hearing, the Insurance Department conceded that it could not  
20 properly evaluate TIRSA's calculated rates, and that it could only do so if it  
21 obtained the detailed cost information on agency commissions that TIRSA does  
22 not provide.

23 77. The Insurance Department's recognition that it is not properly  
24 supervising TIRSA's rate-setting activity is consistent with the April 2007 findings  
25 of the U.S. Government Accountability Office ("GAO") that the title insurance  
26 industry is in need of greater state regulation. The GAO studied the industry  
27 conditions of several states, including New York, and concluded that "state  
28

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1 regulators have not collected the type of data, primarily on title agents' costs and  
2 operations, needed to analyze premium prices and underlying costs."

3 78. Unchecked by regulatory review and insulated from competition,  
4 defendants have thus been able to collectively fix title insurance rates at  
5 supracompetitive levels and earn profits that vastly exceed those contemplated by  
6 the Insurance Department or that would have resulted in a free and open  
7 competitive market.

8 79. At the time of TIRSA's formation, the Insurance Department  
9 established 5 percent (of the total premium) as the level of profit to which title  
10 insurers are entitled. The Insurance Department is supposed to carefully analyze  
11 TIRSA's rate calculations, and, in particular, its revenue and cost information, to  
12 ensure that this 5 percent profit level is maintained and based on a reasonable  
13 premium. However, without the authority or ability to scrutinize agency  
14 commission costs, the Insurance Department has been unable to perform this  
15 function. As a result, defendants (through TIRSA) have been able to set artificially  
16 high title premiums and secure title profits far in excess of the 5 percent threshold.

17 80. Through an independent investigation conducted over the past several  
18 years, the New York State Attorney General found that for every dollar of  
19 insurance premium defendants collected, of the roughly 15 cents that supposedly  
20 accounts for the risk of loss, only 3 cents is paid out in claims. And, of the roughly  
21 85 cents that supposedly covers agency commissions, only between 8 and 11 cents  
22 goes to costs actually incurred by title agents in producing the title policy. These  
23 numbers show that title insurers' collectively fixed rates have resulted in profits  
24 that untethered to and vastly exceeded the costs of producing such policies.

25 81. The New York Attorney General's investigation further revealed that  
26 what was largely driving these numbers were the kickbacks and other financial  
27 inducements defendants were funneling to and through title agents to secure more  
28

1 business. As reported in the New York Insurance Department's 2006 hearing, one  
2 title agency's financial statements revealed that it spent more than \$1 million of  
3 these so-called "agency commissions" on items identified as "Christmas",  
4 "automobile expenses", "political contributions", "promotional expenses", and  
5 "travel and entertainment". These expenses are not even remotely related to the  
6 issuance of title insurance.

7 82. The Washington State Insurance Commissioner's October 2006 report  
8 found strikingly similar abuses in Washington. Violations were pervasive and the  
9 Commissioner concluded that consumers were paying too much as a result.

10 83. All of this "excess money" paid to title agents not only works to steer  
11 business to defendants. It also serves to boost defendants' own profits through the  
12 inflated revenues they obtain to cover these agency payments and through their  
13 ownership or management stake in many of these agencies.

14 84. Defendants are competitors in the sale of title insurance to consumers  
15 throughout the United States. These title insurers have agreed and engaged in  
16 concerted efforts to (i) collectively set and charge uniform and supracompetitive  
17 rates for title insurance, (ii) include in their calculated rate agency commission  
18 costs, (iii) embed within these costs payoffs, kickbacks, and other charges that are  
19 unrelated to the issuance of title insurance, and (iv) hide these supposed "costs"  
20 from regulatory scrutiny by funneling them to and through title agents over which  
21 the government agencies have no ability or authority to regulate.

22 85. The United States Government Accountability Office ("GAO") in its  
23 2007 report entitled "Actions Needed to Improve Oversight of the Title Insurance  
24 Industry and Better Protect Consumers" found several indicia of a lack of  
25 competition and questions about the reasonableness of prices including:  
26  
27  
28

- Consumers find it difficult to shop for title insurance, therefore, they put little pressure on insurers and agents to compete based on price;
- Title agents do not market to consumers, who pay for title insurance, but to those in the position to refer consumers to particular title agents, thus creating potential conflicts of interest;
- A number of recent investigations by HUD and state regulatory officials have identified instances of alleged illegal activities with the title industry that appear to reduce price competition and could indicate excessive prices;
- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
- In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

86. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to oversee title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws.

In part, this situation has resulted from a lack of resources and limited coordination among different

regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary penalty, and alternative title insurance models. [Id. at 41, footnotes omitted.]

**D. Competition Based on Kickbacks and Inducements but not Rates**

87. Having agreed to fix or stabilize prices in New York and other states where they overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

88. In other words, as a direct result of these meetings where rates were agreed to, these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well. To compete on rates in other states could and would imperil their ability to maintain the agreed rate in states like New York.

89. As is the case in New York, a lack of regulatory authority over rates created an environment in which a conspiracy can and did succeed. No agency was examining why all the rates were virtually identical, and no agency was examining whether the costs associated with these premiums were reasonable. This is an environment which is conducive to price-fixing.

1           90. In California, there is a lack of regulatory authority and oversight over  
2 title insurance companies. The rates in California are not set as part of a deliberate  
3 state intervention and the state does not and cannot meaningfully renew or approve  
4 these rates. The rates at issue in this case went into effect without review.

5 **E. Other Indicators of a Lack of Competition and Conditions**  
6 **Conducive to Collusive Rate Setting**

7           91. In addition to the uniformity of rates, other facts suggest that it is more  
8 plausible than not that rates have been set based on an agreement to fix prices.

9           92. In theory, the chain of title should be documented back to its historic  
10 grant of ownership centuries past. Fear about a possible title defect in the distant  
11 past is widely used as a justification by title agencies when convincing property  
12 buyers to purchase an owner policy in addition to the lender policy, which is  
13 mandatory to secure a mortgage. The title agency, however, saves much time and  
14 money when the search is limited to one or two transactions. They rely on the  
15 insurance policy to cover the remote chance of missing an earlier but still valid  
16 claim. If such a claim is asserted and survives the scrutiny of the title insurance  
17 company's legal department, the expected cost of compensation is likely to be less  
18 than the sum of added overhead costs of routinely tracing back every chain of title  
19 to the earliest registered owner in the distant past.

20           93. Title insurance Industry officials tend to justify the large proportion of  
21 the premium retained by the title abstract and settlement agency (from 60 to more  
22 than 90 percent) by the alleged high cost of title searching back into the distant  
23 past. In fact, a high proportion of non-commercial properties are searched only  
24 through the most recent transaction. No information is available as to what  
25 proportion of claims originate in the distant past. The industry has never published  
26 pertinent statistics. It would have a marketing incentive to publish these statistics  
27 if the risk were significant; that it has not published these statistics indicates that  
28

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1 the risk probably is only slightly greater than zero.

2 94. Many U.S. homes are being resold three or four times in twenty-five  
3 years. At each of these occasions, an abstract of tile will be prepared on the basis  
4 of a more or less thorough review of the available title records, inheritance records,  
5 family records and records of past or current liens against a property. It is  
6 reasonable, therefore, to suspect that the risk of a title defect will decrease every  
7 time a property is sold.

8 95. Title searches have become less labor intensive, especially in large  
9 urban counties and cities. More and more of the information is available online.  
10 The statistical likelihood that a title default would be overlooked is a closely held  
11 industry secret, but it appears to be so small that many transactions are now insured  
12 on the basis of a search of the last owner's title history or a search into transactions  
13 that occurred during the last twenty-five to thirty-five years. The evidence is  
14 strong that the title insurance industry has achieved a remarkably high level of loss  
15 minimization.

16 96. Thus, the costs of production have decreased as has the risk of loss yet  
17 none of these factors has resulted in price competition at the consumer level.

18 97. There is a remarkable absence of rate changes by title insurers over the  
19 past five years, despite declining costs of production, increased number of  
20 transactions and increased revenue per transaction. During a period when costs per  
21 unit of production declined significantly, underwritten title companies and title  
22 insurers maintained excessive rates. The prices charged by title insurers and  
23 underwritten title companies were not and are not responsive to the changing costs  
24 of production or increasing revenue per transaction at a given set of rates. Again,  
25 this is indicia of an agreement not to compete based on price.

26 98. As noted, the title companies engage in illegal rebates and kickbacks  
27 where the title insurer or the underwritten title company provides money, free  
28



1 services or other things of value to a real estate agent, a lender or homebuilder in  
 2 exchange for business referrals. These illegal rebates and kickbacks — a  
 3 consequence of reverse competition — show that title insurance rates are  
 4 supracompetitive and that some portion of the overcharge is passed from the  
 5 underwritten title company or title insurer to the referrer of business.

6 99. A lack of competition and the ability to control prices is enhanced by  
 7 the fact that there were few title insurer entrants over the period from 1995 through  
 8 2005 and the number of title insurer groups declined as title insurers acquired other  
 9 title insurers. There were few underwritten title company entrants over the 2000 to  
 10 2005 period and new entrants were controlled business arrangements whose  
 11 addition to the market did not result in greater price competition.

12 100. Access to title plants can be a barrier to entry, but a large barrier to  
 13 entry exists due to the established relationships between the entities that can steer  
 14 the consumer's title and escrow business and the entities who sell title insurance  
 15 and escrow services.

16 101. The title insurance market is highly concentrated — a few title  
 17 insurers account for insurance the vast majority of title insurance sales — at both  
 18 the statewide level and at the county level in California. For example, three title  
 19 insurer groups account for 77.4% of the market at a statewide level. At the county  
 20 level, each individual market was highly concentrated. The GAO found that First  
 21 American and Fidelity had a market share of 66 percent. Such a concentration  
 22 enhances the ability of companies to fix prices.

23 102. The agreement not to compete based on price is also evidenced by the  
 24 fact that no company has marketed its services to consumers, the ultimate  
 25 purchasers of the product.

26 //

27 //

28 //

**VIII. CLAIMS FOR RELIEF**

**COUNT I**

**VIOLATION OF THE SHERMAN ACT**

103. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

104. Although the exact dates are unknown to plaintiff, it is herein alleged upon information and belief that beginning at least as early as March, 2004, and continuing thereafter to the present, defendants and their co-conspirators engaged in a contract, combination or conspiracy to unlawfully restrain trade and commerce in violation of Section 1 of the Sherman Act.

105. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance throughout the State of California;

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in the State of California; and

(c) to allocate and divide the market for title insurance throughout the State of California.

106. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California and is a per se violation of Section I of the Sherman Act.

107. Defendants' price-fixing, market allocation and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

108. Through their collective price-fixing, market allocation and division and manipulation of the regulatory process, defendants have harmed competition by charging consumers supracompetitive prices for title insurance in California, evidenced in part by the fact that the prices are uniformly higher than compared with the cost of providing the insurance.

109. The aforesaid combination and conspiracy has had the following effects among others:

- (a) price competition in the sale of title insurance has been suppressed, restrained and eliminated;
- (b) prices for title insurance have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and
- (c) purchasers of title insurance have been deprived of the benefit of free and open competition.

110. Plaintiff and Class members, as a proximate result of defendants' unlawful conduct in the California title insurance market, have suffered injury in that they paid supracompetitive rates for title insurance. Defendants' horizontal price fixing scheme, unimpeded by meaningful regulatory oversight, constitutes a per se violation of Section 1 of the Sherman Act. As a result, plaintiff and each member of the Class he represents, has been injured and damaged in an amount presently undetermined.

## COUNT II

### VIOLATION OF CALIFORNIA BUSINESS

### AND PROFESSIONS CODE §§ 16720, ET SEQ.

111. Plaintiff incorporates by reference all the preceding allegations as if fully set forth herein.

112. Defendants' acts, as alleged herein, are in violation of Federal and State antitrust laws and were carried out and effectuated within the State of

1 California.

2 113. Defendants, beginning no later than March, 2004 and continuing to the  
3 present, violated the Cartwright Act of California (Cal. Bus. & Prof. Code §§  
4 16720, et seq.).

5 114. As a direct result of defendants' unlawful conduct, plaintiff and Class  
6 members, have suffered injury in that they paid more for title insurance than they  
7 would have paid in the absence of the alleged antitrust violations and have suffered  
8 injury to their business and property.

9 **COUNT III**

10 **CALIFORNIA'S BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.**

11 115. Plaintiff incorporates by reference all of the preceding allegations as if  
12 fully set forth herein.

13 116. Plaintiff and Class members allege that defendants' statements and  
14 misrepresentations constitute unfair, unlawful and deceptive trade practices in  
15 violation California's UCL, Bus. & Prof. Code §§ 17200, et seq.

16 117. Defendants' illegal conduct, alleged herein, is ongoing and part of a  
17 larger pattern of conduct that permeates the title insurance industry. Plaintiff and  
18 Class members sustained injuries in the form of lost money or property, paying an  
19 inflated price for title insurance, as a direct result of defendants' conduct in  
20 violation of § 17200 of the California Business and Professions Code.

21 118. Plaintiff requests that this Court enjoin the defendants from continuing  
22 its unfair, unlawful, and deceptive practices. Plaintiff and Class members are  
23 entitled to full restitution and/or disgorgement of all revenue, earnings, profits,  
24 compensation, and benefits resulting from defendants' unlawful business acts, as  
25 provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for  
26 such other relief as set forth in the Prayer for Relief.

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**COUNT IV****UNJUST ENRICHMENT**

119. Plaintiff incorporates by reference all of the preceding allegations as if fully set forth herein.

120. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

121. Defendants have received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

122. Defendants are aware of their receipt of the above-described benefit.

123. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

124. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

125. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial, and seek full disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands:

A. That the alleged combination and conspiracy among the defendants and their co-conspirators be adjudged and decreed an unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

B. That the Court declare that the premiums charged are excessive under state law and order damages;

C. That judgment be entered against defendants, jointly and severally, and in favor of plaintiff, and each member of the Class it represents, for threefold

1 the damages determined to have been sustained by plaintiff, and each member of  
 2 the Class it represents, together with the cost of suit, including a reasonable  
 3 attorneys' fee;

4 D. Each of the defendants, successors, assignees, subsidiaries and  
 5 transferees, and their respective officers, directors, agents and employees, and all  
 6 other persons acting or claiming to act on behalf thereof or in concert therewith, be  
 7 perpetually enjoined and restrained from, in any manner, directly or indirectly,  
 8 continuing, maintaining or renewing the aforesaid combination, conspiracy,  
 9 agreement, understanding or concert of action, adopting or following any practice,  
 10 plan, program, or design having a similar purpose or effect in restraining  
 11 competition; and

12 E. Other and further relief as may appear necessary and appropriate.

### 13 JURY TRIAL DEMANDED

14 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff  
 15 demands a trial by jury for all claims alleged herein.

16  
 17 Dated: March 20, 2008

**LIM, RUGER & KIM, LLP**

18  
 19 By:

20 Christopher Kim  
 21 Lisa J. Yang

22 **SCHIFFRIN BARROWAY TOPAZ &  
 23 KESSLER, LLP**

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Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

**CV08- 1897 DSF (AJWx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Christopher Kim (Bar No. 082080)  
Lisa J. Yang (Bar No. 208971)  
LIM RUGER & KIM, LLP  
1055 West Seventh Street, Suite 2800  
Los Angeles, California 90017  
Telephone: (213) 955-9500

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VINCENT LEON DAVIS, individually  
and on behalf of all others  
Similarly situated.  
v.

PLAINTIFF

CASE NUMBER

CV08-01897

DSF AJWx

(COMPLETE DEFENDANTS' LIST ATTACHED)

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): (Please see the list attached)

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Christopher Kim or Lisa J. Yang, whose address is Lim, Ruger & Kim, LLP, 1055 West Seventh Street, Suite 2800, Los Angeles, CA 90017. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

MAR 20 2008

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Natalie Gonzales*  
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

## ATTACHMENT TO SUMMONS

Defendants,

FIDELITY NATIONAL FINANCIAL, INC., FIDELITY NATIONAL  
TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE  
COMPANY, TICOR TITLE INSURANCE COMPANY OF FLORIDA,  
CHICAGO TITLE INSURANCE COMPANY, NATIONAL TITLE  
INSURANCE OF NEW YORK, INC., SECURITY UNION TITLE  
INSURANCE COMPANY, THE FIRST AMERICAN CORPORATION,  
FIRST AMERICAN TITLE INSURANCE COMPANY, UNITED  
GENERAL TITLE INSURANCE COMPANY, LAND AMERICA  
FINANCIAL GROUP, INC., COMMONWEALTH LAND TITLE  
INSURANCE COMPANY, LAWYERS TITLE INSURANCE  
CORPORATION, TRANSNATION TITLE INSURANCE COMPANY,  
STEWART TITLE GUARANTY COMPANY and STEWART TITLE  
INSURANCE COMPANY

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )  Vincent Leon Davis  <b>(b) County of Residence of First Listed Plaintiff</b> (Except in U.S. Plaintiff Cases):  <b>(c) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Christopher Kim/Lisa J. Yang LIM RUGER & KIM, LLP 1055 West Seventh Street, Suite 2800 Los Angeles, CA 90017 Tel: (213) 955-9500		<b>DEFENDANTS</b>  Fidelity National Finance, Inc., et al.  County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):  Attorneys (If Known)	
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<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding   
 ☐ 2 Removed from State Court   
 ☐ 3 Remanded from Appellate Court   
 ☐ 4 Reinstated or Reopened   
 ☐ 5 Transferred from another district (specify): \_\_\_\_\_   
 ☐ 6 Multi-District Litigation   
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes    ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☒ Yes    ☐ No      **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 28 U.S.C. §§ 1331, 1337(a) and 1367

<b>VII. NATURE OF SUIT</b> (Place an X in one box only.)					
<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed? ☒ No    ☐ Yes

If yes, list case number(s): \_\_\_\_\_

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

CV08-01897

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**VIII(b). RELATED CASES:** Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

VINCENT LEON DAVIS - Los Angeles

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

FIDELITY NATIONAL FINANCIAL, INC. - Florida  
 FIDELITY NATIONAL TITLE INSURANCE COMPANY - Florida  
 TICOR TITLE INSURANCE COMPANY - Florida  
 TICOR TITLE INSURANCE COMPANY OF FLORIDA - Florida  
 (See the attached for continuation of this list)

**List the California County, or State if other than California, in which **EACH** claim arose.** (Use an additional sheet if necessary)

**Note:** In land condemnation cases, use the location of the tract of land involved.

Los Angeles

**X. SIGNATURE OF ATTORNEY (OR PRO PER):** \_\_\_\_\_

**Date** 3-20-2008

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))



**ATTACHMENT TO CIVIL COVER SHEET (CV-71 (07/05))**

- CHICAGO TITLE INSURANCE COMPANY - Chicago
- NATIONAL TITLE INSURANCE OF NEW YORK, INC. - New York
- SECURITY UNION TITLE INSURANCE COMPANY - Florida
- THE FIRST AMERICAN CORPORATION - Orange County, California
- FIRST AMERICAN TITLE INSURANCE COMPANY – Orange County, California
- UNITED GENERAL TITLE INSURANCE COMPANY – Los Angeles County, California
- LANDAMERICA FINANCIAL GROUP, INC. - Virginia
- COMMONWEALTH LAND TITLE INSURANCE COMPANY - Virginia
- LAWYERS TITLE INSURANCE CORPORATION – Connecticut
- TRANSNATION TITLE INSURANCE COMPANY - Virginia
- STEWART TITLE GUARANTY COMPANY - Texas
- STEWART TITLE INSURANCE COMPANY – New York

# **EXHIBIT 7**

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15 **Counsel for Plaintiff**

16 [Additional counsel listed on signature page]

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 DR. RAJNIKANT KOTHARI, on  
20 Behalf of Himself,

21 Plaintiff,

22 vs.

23 FIRST AMERICAN TITLE  
24 INSURANCE COMPANY,  
25 FIDELITY NATIONAL TITLE  
26 INSURANCE COMPANY,  
27 CHICAGO TITLE INSURANCE  
28 COMPANY, TICOR TITLE  
INSURANCE COMPANY,  
FIDELITY NATIONAL FINANCE,  
INC., UNITED GENERAL TITLE  
INSURANCE COMPANY, FIRST  
AMERICAN CORPORATION,  
COMMONWEALTH LAND TITLE  
INSURANCE COMPANY,  
LAWYERS TITLE INSURANCE  
CORPORATION, LANDAMERICA  
FINANCIAL GROUP, INC.,  
STEWART TITLE GUARANTY  
COMPANY, and STEWART TITLE  
INSURANCE COMPANY,

Defendants.

CASE NO.: SACV08-00440 DOC (RNBx)

**CLASS ACTION**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**BY FAX**

2008 APR 23 PM 2:27  
CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
SANTA ANA

FILED

1 Plaintiff Dr. Rajnikant Kothari (“plaintiff”), on behalf of himself and all others  
2 similarly situated, upon knowledge with respect to his own acts and upon  
3 information and belief with respect to all other matters, alleges as follows:

4 1. Plaintiff brings this action under Section 1 of the Sherman Act and the  
5 statutes of the State of California to enjoin defendants’ illegal price-fixing activity  
6 and recover damages for the illegal overcharges the Class has paid in connection  
7 with the unlawful activity by defendants alleged herein.

#### 8 **JURISDICTION AND VENUE**

9 2. Plaintiff brings this action under Section 16 of the Clayton Act, 15  
10 U.S.C. § 26, to prevent and restrain violations of Section 1 of the Sherman Act, 15  
11 U.S.C. § 1, and for damages under Section 4 of the Clayton Act, 15 U.S.C. § 15.  
12 This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337.

13 3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and  
14 15 U.S.C. § 22 because each defendant is a corporation that is found or transacts  
15 business in this district, and because a substantial portion of the affected trade and  
16 commerce described herein has been carried out in this district.

17 4. The violations of antitrust law alleged herein have substantially affected  
18 interstate commerce. Defendants sell title insurance throughout the United States  
19 collecting billions of dollars in premiums annually.

#### 20 **THE PARTIES**

21 5. Plaintiff is a resident of Canton, Ohio. During the Class Period as  
22 hereinafter defined plaintiff purchased title insurance at a price that was artificially  
23 high because of defendants’ unlawful price-fixing agreement.

24 6. The Fidelity family of title insurance companies (collectively,  
25 “Fidelity”)-- which includes defendant Fidelity National Title Insurance Co.  
26 (“Fidelity Title”), defendant Chicago Title Insurance Company (“Chicago Title”),  
27 defendant Ticor Title Insurance Company (“Ticor Title”), and their affiliates – is  
28 engaged in selling title insurance to purchasers of commercial and residential real

1 estate throughout the United States, including California. Nationally, Fidelity  
2 accounts for approximately 27 percent of title premiums, which in 2006 amounted to  
3 roughly \$4.6 billion. Fidelity Title, Chicago Title, and Ticor Title were founding  
4 members of TIRSA (as discussed below).

5 7. Fidelity Title, Chicago Title, Ticor Title, and their affiliates are wholly-  
6 owned and controlled by defendant Fidelity National Finance, Inc. ("Fidelity  
7 National"), a Delaware corporation headquartered in Jacksonville, Florida. Through  
8 its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance,  
9 and claims management services. Fidelity engaged in the conduct challenged herein  
10 with the approval and assent of Fidelity National.

11 8. The First American family of title insurance companies (collectively,  
12 "First American") – which includes defendant First American Title Insurance  
13 Company ("First American Title") and defendant United General Title Insurance  
14 Company ("United General Title"), and their affiliates – is engaged in selling title  
15 insurance to purchasers of commercial and residential real estate throughout the  
16 United States, including California. Nationally, First American accounts for  
17 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8  
18 billion. First American Title and United General Title were founding members of  
19 TIRSA.

20 9. First American Title, United General Title, and their affiliates are  
21 wholly-owned and controlled by defendant First American Corporation ("FAC"), a  
22 California corporation headquartered in Santa Ana, California. Through its  
23 subsidiaries, FAC is a provider of title insurance, business information, and related  
24 products and services. FAC had 2006 revenues of roughly \$8.5 billion. First  
25 American engaged in the conduct challenged herein with the approval and assent of  
26 FAC.

10. The LandAmerica family of title insurance companies (collectively, “LandAmerica”) – which includes defendant Commonwealth Land Title Insurance Company (“Commonwealth”), defendant Lawyers Title Insurance Corporation (“Lawyers Title”), and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including California. Nationally, LandAmerica accounts for approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion. Commonwealth and Lawyers Title were founding members of TIRSA.

11. Commonwealth and Lawyers Title are wholly-owned and controlled by defendant LandAmerica Financial Group, Inc. (“LAFG”), a Virginia corporation headquartered in Glen Allen, Virginia. Through its subsidiaries, LAFG is a provider of title insurance and other products and services that facilitate the purchase, sale, transfer, and financing of residential and commercial real estate. LAFG had 2006 revenues of roughly \$4 billion. LandAmerica engaged in the conduct challenged herein with the approval and assent of LAFG.

12. The Stewart family of title insurance companies (collectively, “Stewart”) – which includes defendant Stewart Title Guaranty Company and, defendant Stewart Title Insurance Company, and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including California. Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA.

13. Together, Fidelity, First American, LandAmerica and Stewart account for more than 85 percent of title premiums in the United States, which in 2006 amounted to roughly \$14.5 billion.

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1           14. Significant nonparty TIRSA is a voluntary association of title insurers  
 2 licensed as a rate service organization pursuant to Article 23 of the Insurance Law of  
 3 the State of New York. TIRSA maintains its offices in New York City, which until  
 4 recently were located at the same New York address of defendant Fidelity Title.

5           15. TIRSA annually compiles from its members statistical data relating to  
 6 their title insurance premiums, losses and expenses and submits this information in  
 7 aggregate form to the New York Insurance Department. TIRSA also prepares and  
 8 submits the New York Title Insurance Rate Manual which sets forth title rates to be  
 9 charged and rules to be followed by TIRSA's members. The Insurance Department  
 10 has never objected to any of the rates TIRSA has collectively set.

11           16. TIRSA's membership is comprised of defendant insurers and all other  
 12 title insurers that are licensed to issue policies in New York. Currently, Fidelity,  
 13 First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22  
 14 members. As such, they comprise a majority voting block which, according to  
 15 TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular,  
 16 TIRSA's collective rate setting activity.

### 17                           **DETAILED FACTUAL ALLEGATIONS**

#### 18       A.   The Business of Title Insurance

19           17. Title insurance serves an important purpose. It protects the purchaser of  
 20 a property from any unidentified defects in the title that would in any way interfere  
 21 with the full and complete ownership and use of the property and with the ultimate  
 22 right to resell the property. Title insurance is required by lenders in most residential  
 23 and commercial real estate transactions.

24           18. Despite the importance and high cost of title insurance, consumers have  
 25 little understanding of the product, the purpose it serves, and the reasonableness of  
 26 the price they pay for it. They also exercise little discretion in choosing the title  
 27 insurer from which they purchase the insurance. That decision is typically made for  
 28 them by their lawyer, mortgage broker, lender, or realtor. Consequently, for most

1 purchasers, the cost of title insurance is largely overlooked and seldom, if ever,  
2 challenged. Most consumers do not even become aware of the price they will pay  
3 and to which insurer they will pay it until the actual closing of the real estate  
4 transaction. Usually the consumer does not “shop around” or negotiate with respect  
5 to the price of the insurance coverage.

6 19. Due to this lack of a competitive environment, title insurers have little  
7 or no incentive to compete with respect to price.

8 20. The most effective way for a particular title insurer to get business is to  
9 encourage those making the purchasing decisions – typically lawyers, brokers or  
10 lenders servicing a customer – to steer business to that insurer. One way to so  
11 motivate these third-party representatives is through kickbacks in the form of  
12 finder’s fees, gifts, and other financial enticements. Therefore, it is higher pricing  
13 (which allows for payments to referring parties), not lower pricing or competing on  
14 the basis of price, that provides the best way for title insurers to compete and  
15 increase their business.

16 21. Premiums for title insurance cover both the risk of loss to the  
17 underwriter and “agency commissions.” Unlike property insurance, title insurance  
18 carries with it a very limited risk of loss to the insurer. That is because the title  
19 insurance protects against *prior* events that cause defects in title. With a proper  
20 search and examination of prior ownership records, any such defects can and almost  
21 always are readily identified and excluded from the policy’s coverage.  
22 Consequently, the average claim payout on a title insurance policy amounts to only  
23 about 5 percent of the total premium collected. This is very different from property  
24 coverage (such as auto and home insurance) – which protects against *future*  
25 occurrences over which the insurer has little to no control – where the average claim  
26 payout amounts to about 80 percent of the total premium.

1        22. The “agency commissions” component of the title insurance rate covers  
2 payments made to title agents. Defendants have an ownership or management stake  
3 in many of the title agencies to which these payments are made. A small portion of  
4 these payments is for the search and exam of prior ownership records of the property  
5 being purchased to identify any liens, encumbrances, burdens, exclusions, or other  
6 defects in the title. The search and exam function does not involve the spreading or  
7 underwriting of risk and title insurers typically outsource this task to title agents.

8        23. The remainder, and by far the bulk, of the agency commissions are  
9 comprised of costs unrelated to the issuance of title insurance. These costs include  
10 kickbacks and other financial inducements title insurers provide to title agents and  
11 indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality,  
12 are the ones deciding which title insurer to use. These payments have nothing to do  
13 with the issuance of title insurance and are made by title insurers merely to inflate  
14 their revenues and steer business their way.

15        24. Under TIRSA’s collective rate setting regime, roughly 85 percent of the  
16 total title insurance premium is based on the so-called “costs” associated with the  
17 payment of agency commissions. Only 15 percent is based on costs associated with  
18 the risk of loss. TIRSA publishes its final calculated title rates in the New York  
19 Title Insurance Rate Manual. These rates are tied to the value of the property being  
20 insured. This is so despite the fact that the costs associated with agency  
21 commissions are entirely unrelated to the value of the property. Indeed, agency  
22 kickbacks and enticements have little to do with producing a particular title policy  
23 and provide no value – proportional to property value or otherwise – to the  
24 consumer. Even search and exam costs are unrelated to property value. They instead  
25 depend on the age of the property, the complexity of the ownership history, and the  
26 accessibility of prior ownership records.

1     B.     TIRSA

2           25.     Prior to TIRSA, the New York Board of Title Underwriters (“NYBTU”)  
3     served as the title insurance rate-setting body in New York. NYBTU, along with the  
4     title insurance rate setting bureaus in many other states, was disbanded in the mid-  
5     1980’s in the wake of a Federal Trade Commission (“FTC”) challenge to the  
6     collective rate setting activity of many of these associations. The FTC’s challenge  
7     culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme  
8     Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of  
9     these rating bureaus must be actively supervised by the state.

10           26.     In *Ticor*, like here, the FTC focused its challenge on agency  
11     commissions. The FTC contended that the respective state insurance departments  
12     merely rubber-stamped this portion of the collectively fixed rates without any  
13     independent review or analysis of their reasonableness or cost justification. The  
14     Supreme Court agreed with the FTC that this kind of limited state oversight was not  
15     sufficient. Rather, to avoid illegal price-fixing liability, the state insurance  
16     department has to “exercise[] sufficient independent judgment and control so that the  
17     details of the rates or prices have been established as a product of deliberate state  
18     intervention, not simply by agreement among private parties.” *Ticor*, 504 U.S. at  
19     634-35.

20           27.     Following the Supreme Court’s instruction in *Ticor*, the Third Circuit on  
21     remand in *Ticor Title Ins. Co. v. FTC*, 998 F. 2d 1129 (3d Cir. 1993), upheld the  
22     FTC’s finding that the collective rate-setting of certain state rating bureaus was  
23     improper because it was not actively supervised by the state. According to the circuit  
24     court, “[t]he Supreme Court plainly instructed us that a state’s rubber stamp is not  
25     enough. Active supervision requires the state regulatory authorities’ independent  
26     review and approval.” *Id.* at 1139.

1        28. Defendants formulated TIRSA's first rate manual and procedure soon  
2 after the Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a  
3 rate-setting scheme to get around the rigors of state oversight required by *Ticor*.  
4 They have done so by calculating a single rate that comprises both risk and agency  
5 commission costs and by outsourcing to title agents the agency commission costs. In  
6 this way, defendants avoid providing the Insurance Department with any detailed  
7 breakout or backup for the bulk of the costs that make up their collectively fixed  
8 rates.

9        29. TIRSA merely submits an aggregated figure that is supposed to  
10 represent the total agency commission costs. Embedded within this figure is the vast  
11 quantity of dollars that are funneled to and through the title agencies as kickbacks,  
12 financial inducements and other costs unrelated to the issuance of title insurance.  
13 Defendants' design in all of this has been to effectively "hide" the cost basis for their  
14 artificially high and collectively fixed title insurance premiums from the regulatory  
15 scrutiny that *Ticor* demands.

16        30. There is no provision under the Insurance Law for TIRSA to include in  
17 its collectively fixed rates kickbacks and other agency commission payments  
18 unrelated to the issuance of title insurance. Indeed, the Insurance Department has  
19 publicly stated that it lacks the authority to review any agency commission payments.  
20 It has likewise recognized that defendants' outsourcing of agency commission costs  
21 has prevented it from performing a meaningful review of TIRSA's calculated rates.  
22 This was made clear at a November 2006 public hearing the Insurance Department  
23 held – the first in 15 years – where it questioned TIRSA and its members on  
24 TIRSA's failure to provide the Insurance Department with any backup or detail for  
25 agency commissions. Further, at the hearing the Insurance Department conceded  
26 that it could not properly evaluate TIRSA's rates without access to detailed  
27 information concerning agency commissions that TIRSA does not provide.

31. The Insurance Department's recognition that it is not properly supervising TIRSA's rate-setting activity is consistent with the April 2007 findings of the U.S. Government Accountability Office ("GAO") that the title insurance industry is in dire need of greater state regulation. The GAO studied the industry conditions of several states, including New York, and concluded that "state regulators have not collected the type of data, *primarily on title agents' costs and operations*, needed to analyze premium prices and underlying costs." (emphasis added)

32. To remedy this failing, GAO has proposed, among other things: 1) strengthening the regulation of title agents through means such as establishing meaningful requirements of capitalization, licensing, and continuing education; and 2) improving the oversight of title agents through more detailed audits and the collection of data that would allow in-depth analyses of agents' costs and revenues.

33. Unchecked by regulatory review and insulated from competition, defendants have thus been able to collectively fix title insurance rates at supracompetitive levels and earn profits in New York that vastly exceed those contemplated by the Insurance Department or that would have resulted in a free and lawfully operating competitive market.

#### C. Defendants' Agreement Not to Compete on The Price of Title Insurance in California

34. The title insurance market in California consists of a dozen carriers, ranging in size from regional companies to national affiliates. However, the market is dominated by four groups of affiliated companies which, combined, sell over 90 percent of the title insurance policies sold in California and which own and control the title plants in many California counties that every title insurer must rely on in order to issue title policies.



1           35. Title companies, in marked contrast to property, casualty, life and other  
2 traditional insurance carriers, choose not to market their products directly to the  
3 consumers who pay for them. Instead, the title insurance industry operates on what  
4 is termed a "reverse competition" mode. Reverse competition means that title  
5 companies solicit business referrals from the other major players in the home  
6 purchase scenario - real estate agents and agencies, banks, lenders, builders,  
7 developers and others: middlemen or go-betweens. The title companies pay  
8 middlemen for these referrals in the form of direct payments, advertising expenses,  
9 junkets, parties and other kick-backs and inducements.

10           36. Reverse competition, as the term suggests, isn't a model that benefits  
11 consumers through market-driven forces. In fact, consumers are bypassed  
12 completely as title companies spend nearly all of their marketing budgets "wining  
13 and dining" real estate agents, banks, lenders, builders, developers and others in an  
14 effort to convince these middlemen to steer their home-buying clients to their  
15 companies for their title insurance needs.

16           37. In some of the major markets in the United States, these same title  
17 insurers collectively meet, and jointly set rates and file these rates with the applicable  
18 state insurance authority. The rates are not subject to any meaningful review or  
19 regulation. The companies agree to fix the price of title insurance far in excess of the  
20 risk and loss experience associated with such insurance. As a result of the joint  
21 agreement as to rates, competition is relegated to the middleman.

22           38. As a result of their joint rate setting and agreement, no company  
23 competes on price to the consumer.

24           39. Having agreed to fix prices in states where joint rate setting occurs, the  
25 companies agreed to not compete based on price to the consumer in other states,  
26 including California, where regulation of filed rates is lax or non-existent. Thus, they  
27 agreed to set rates at supracompetitive prices and to compete based on offering  
28 inducements to middlemen.

1       40. In California, in three successive reports, the Office of the Insurance  
2 Commissioner ("OIC") has found an "astonishing number" of such inducements that  
3 are in violation of state law. However, the OIC does not actively oversee or regulate  
4 rates, and, in fact, does not by its own admission have the power to do so. The  
5 absence of regulation has allowed collusive behavior and excessive rates.

6       41. In addition to paying inducements and kick-backs, the title companies  
7 and their agents divide the market of real-estate middlemen through the use of  
8 Affiliated Business Arrangements ("ABAs"), wherein the dominant real estate  
9 brokers purchase significant ownership stakes in favored title insurance affiliates.  
10 The real estate brokers then reward their associates for using the preferred title  
11 insurance providers and lock-out independent title insurers.

12       42. The GAO visited several states, including California, and found a lack  
13 of regulatory oversight, as stated in a report:

14       In the states we visited, we found that regulators did not assess title  
15 agents' costs to determine whether they were in line with premium  
16 rates; had made only limited efforts to oversee title agents (including  
17 ABAs involving insurers and agents); and, until recently, had taken  
18 few actions against alleged violations of antikickback laws. In part,  
19 this situation has resulted from a lack of resources and limited  
20 coordination among different regulators within states. On the federal  
21 level, authority for alleged violations of section 8 of RESPA,  
22 including those involving increasingly complex ABAs, is limited to  
23 seeking injunctive relief. Some state regulators expressed frustration  
24 with HUD's level of responsiveness to their requests for help with  
25 enforcement, and some industry officials said that RESPA rules  
26 regarding ABAs and referral fees need to be clarified. Industry and  
27 government stakeholders have proposed several regulatory changes,  
28 including RESPA reform, strengthened regulation of agents, a

1 competitor right of action with no monetary penalty, and alternative  
2 title insurance models.

3  
4 43. Having agreed to fix or stabilize prices in New York and other states  
5 where they covertly meet to promulgate rates, these same defendants then set out to  
6 do the same in other states. In other words, as a direct result of these meetings  
7 where rates were agreed to, these same defendants agreed, either expressly or tacitly,  
8 not to compete on rates in other states as well. To compete on rates in other states  
9 could and would imperil their ability to maintain the agreed rate in states like New  
10 York.

11 44. As is the case in New York, a lack of regulatory authority over rates  
12 created an environment in which a conspiracy can and did succeed. No agency was  
13 examining why all the rates were virtually identical, and no agency was examining  
14 whether the costs associated with these premiums were reasonable. This is an  
15 environment that is conducive to price fixing.

16 45. In addition to the uniformity of rates, other facts suggest that it is more  
17 plausible than not that rates have been set based on an agreement to fix prices. In  
18 theory, the chain of title should be documented back to its historic grant of  
19 ownership centuries in the past. Fear about a possible title defect in the distant past  
20 is widely used as a justification by title agencies when convincing property buyers to  
21 purchase an owner policy in addition to the lender policy, which is mandatory to  
22 secure a mortgage. The title agency, however, saves much time and money when the  
23 search is limited to one or two transactions. They rely on the insurance policy to  
24 cover the remote chance of missing an earlier but still-valid claim. On balance, the  
25 expected cost of compensation in the cases in which a title defect materializes is  
26 likely to be less than the sum of added overhead costs of routinely tracing back every  
27 chain of title to the earliest registered owner in the distant past.

1           46. Title insurance industry officials tend to justify the large proportion of  
2 the premium retained by the title abstract and settlement agency (from 60 to more  
3 than 90 percent) by the alleged high cost of title searching back into the distant past.  
4 In fact, a high proportion of noncommercial properties are searched only through the  
5 most recent transaction. No information is available as to what proportion of claims  
6 originate in the distant past.

7           47. Many U.S. homes are being resold three or four times in twenty-five  
8 years. At each of these occasions, an abstract of title will be prepared on the basis of  
9 a more or less thorough review of the available title records, inheritance records,  
10 family records and records of past or current liens against a property. It is  
11 reasonable, therefore, to suspect that the risk of a title defect will decrease every time  
12 a property is sold.

13           48. Title searches have become less labor intensive, especially in large  
14 urban counties and cities. More and more of the information is available online. The  
15 statistical likelihood that a title default would be overlooked is a closely held  
16 industry secret, but it appears to be so small that many transactions are now insured  
17 on the basis of a search of the last owner's title history or a search into transactions  
18 that occurred during the last twenty-five to thirty-five years.

19           49. The available evidence strongly suggests that the title insurance  
20 industry has achieved a remarkably low level of loss. Yet, despite lowered risks of  
21 loss and transaction costs, the defendants have not engaged in price competition at  
22 the consumer level.

23           50. There is a remarkable absence of rate changes by title insurers over the  
24 past five years, despite declining costs of production, increased number of  
25 transactions and increased revenue per transaction, during a period when costs per  
26 unit of production declined significantly. This failure to compete on price and  
27 absence of material rate changes are indicia of an agreement not to compete based on  
28 price.

51. The title insurance market is highly concentrated - a few title insurers account for the vast majority of title insurance sales - at both the statewide level and at the county level in California. For example, three title insurer groups account for 77.4% of the market at a statewide level. At the county level, each individual market was highly concentrated. Such a concentration enhances the ability of defendants to fix prices

### **CLASS ACTION ALLEGATIONS**

52. Plaintiff brings this action as a class action under rule 23(b)(3) of the Federal Rules of Civil Procedure for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule (b)(3) Class is comprised of all consumers who purchased title insurance in California from defendants during the fullest period permitted by the applicable statute of limitations.

53. Plaintiff, along with all other members of the Rule (b)(3) Class, was injured as a result of paying supracompetitive prices for title insurance in California. These supracompetitive prices were achieved as a result of defendants' illegal price-fixing activities. Defendants are jointly and severally liable for the illegal price-fixing activities alleged herein.

54. Members of the (b)(3) Class include hundreds of thousands, if not millions, of consumers. Class members are so numerous that their joinder would be impracticable.

55. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1 and the California statutes. The Rule (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with injury by the anticompetitive conduct detailed herein.

56. Defendants have acted, continued to act, refused to act and continued to refuse to act on grounds applicable to the Rule (b)(2) Class, thereby making appropriate final injunctive relief with respect to the Rule (b)(2) Class as a whole.

57. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of consumers. They are so numerous that their joinder would be impracticable.

58. Common questions of law and fact exist with respect to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law or fact common to the class are the following:

- a. Whether defendants have engaged in the alleged illegal price-fixing activity;
- b. The duration and scope of defendants' alleged illegal price-fixing activity;
- c. Whether defendants' alleged illegal price-fixing has caused higher prices to plaintiff and other purchasers of title insurance in California; and
- d. The extent to which defendants' unlawful activities artificially inflated title insurance rates.

59. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's claims are typical of the claims of the Class and plaintiff will fairly and adequately represent the interests of the Class. Plaintiff has retained counsel competent and experienced in class action and other complex litigation to represent the Class.

60. This action is superior to any other method for the fair and efficient adjudication of this legal dispute since joinder of all members is not only impracticable, but impossible. The damages suffered by certain members of the Class are small in relation to the expense and burden of individual litigation and therefore it is highly impractical for such Class members to seek redress for damages resulting from defendants' anticompetitive conduct.



61. There will be no extraordinary difficulty in the management of the Class action.

**CAUSES OF ACTION**

**AS AND FOR A FIRST CAUSE OF ACTION**

**AGAINST ALL DEFENDANTS FOR PER SE PRICE FIXING**

(Sherman Act Section I – *Per Se* Unlawful Horizontal Price-Fixing)

62. Plaintiff repeats and realleges each and every allegation of this complaint as if fully set forth herein.

63. Defendants have entered into a continuing illegal contract, combination, or conspiracy in restraint of trade, the purpose and effect of which is to fix and maintain supracompetitive prices to consumers for title insurance in California and elsewhere. This contract, combination, and conspiracy is illegal *per se* under Section 1 of the Sherman Act, 15 U.S.C. § 1.

64. Defendants' contract, combination, or conspiracy is comprised of defendants' efforts and agreement to (i) collectively fix uniform and supracompetitive rates for title insurance in California and other states; (ii) include in their calculated rates agency commission costs; (iii) embed within these costs payoffs, kickbacks, and other charges to title agents that are unrelated to the issuance of title insurance; (iv) hide these supposed costs from regulatory scrutiny by funneling them to and through title agents; and (v) agree, either expressly or tacitly, not to compete on premium rates for title insurance in the State of California.

65. Defendants' contract, combination, or conspiracy has caused substantial anticompetitive effects in the title insurance market. It has done so by causing plaintiff, and other purchasers of title insurance in California, to pay significantly more for title insurance than they would have in the absence of defendants' illegal activity.

66. As a result of these violations of Section 1 of the Sherman Act, plaintiff and the purported Class have been injured in their business and property in an amount not presently known, but which is, at a minimum, millions dollars, prior to trebling.

67. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted. Plaintiff has no adequate remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**AGAINST ALL DEFENDANTS FOR VIOLATION OF**  
**CAL. BUS. AND PROF. CODE §§ 16720 ET SEQ.**

68. Plaintiff repeats and realleges each of his allegations as though fully set forth herein.

69. Defendants' conduct as set forth above is in violation of the Cartwright Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

70. As a direct result of defendants' unlawful acts plaintiff and members of the Class have paid artificially inflated prices for title insurance and have suffered injury to their business and property.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**AGAINST ALL DEFENDANTS FOR VIOLATION OF**  
**CAL. BUS. AND PROF. CODE §§ 17200 ET SEQ.**

71. Plaintiff repeats and realleges each of his previous allegations as though fully set forth herein.

72. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL, Bus. & Prof. Code §§ 17200, *et seq.*

73. All of the wrongful conduct alleged herein occurred and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

1       74. Plaintiff has suffered injury in fact and has lost money or property as a  
2 result of defendants' unfair, unlawful and/or deceptive practices by paying a higher  
3 price for title insurance than he would or should have absent the conduct complained  
4 of.

5       75. Plaintiff requests that this Court enter such orders or judgment as may  
6 be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or  
7 deceptive practices, to restore to any person in interest any money which may have  
8 been acquired by means of such unfair competition and to disgorge any profits  
9 realized by defendants as a result of their unfair, unlawful and/or deceptive practices,  
10 as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for  
11 such other relief as set forth in the Prayer for Relief.

12                   **AS AND FOR A FOURTH CAUSE OF ACTION**  
13                   **FOR UNJUST ENRICHMENT**  
14

15       76. Plaintiff incorporates by reference the preceding allegations.

16       77. This Cause of Action is pled in the alternative to all claims and/or  
17 causes of action at law.

18       78. Defendants have received a benefit from plaintiff and the Class  
19 members in the form of the prices plaintiff and the Class members paid for  
20 defendants' title insurance.

21       79. Defendants are aware of their receipt of the above-described benefit.

22       80. Defendants received the above-described benefit to the detriment of  
23 plaintiff and other members of the Class.

24       81. Defendants continue to retain the above-described benefit to the  
25 detriment of plaintiff and the Class members.

26       82. As a result of defendants' unjust enrichment, plaintiff and the Class  
27 members have sustained damages in an amount to be determined at trial and seek full  
28 disgorgement and restitution

**DEMAND FOR JURY TRIAL**

83. Plaintiff demands a trial by jury of all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff and the Class request the following relief:

- A. That the Court determine that this action is a proper class action, certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as class counsel;
- B. That the Court declare, adjudge, and decree that defendants have committed the violations of federal law alleged herein;
- C. That defendants, their directors, officers, employees, agents, successors, and assigns be permanently enjoined and restrained from, in any manner, directly or indirectly, unlawfully fixing or maintaining their title insurance rates at supracompetitive levels, and committing any other violations of Section 1 of the Sherman Act, the California Statutes, and/or of other laws having a similar purpose and effect;
- D. That the Court award damages sustained by Class members from defendants' violations of Section 1 of the Sherman Act in an amount to be proven at trial, to be trebled according to law, plus interest (including prejudgment interest), to compensate them for the overcharges they incurred;

///

///

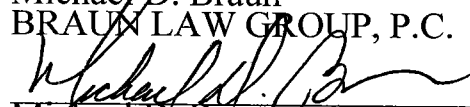
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1 E. That the Court award the Class attorneys' fees and costs of suit , and  
2 grant such other and further relief as the Court may deem just and  
3 proper.

4  
5 Dated: April 23, 2008

6  
7 By:

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# **EXHIBIT 8**

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14 *Attorneys for Plaintiff*

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 Emilse Magana, on behalf of herself and all others  
18 similarly situated,

19 Plaintiff,

20 v.

21 FIDELITY NATIONAL FINANCIAL, INC.,  
22 FIDELITY NATIONAL TITLE INSURANCE  
23 COMPANY, TICOR TITLE INSURANCE  
24 COMPANY, TICOR TITLE INSURANCE  
25 COMPANY OF FLORIDA, CHICAGO TITLE  
26 INSURANCE COMPANY, NATIONAL TITLE  
27 INSURANCE OF NEW YORK, INC., SECURITY  
28 UNION TITLE INSURANCE COMPANY, THE  
FIRST AMERICAN CORPORATION, FIRST  
AMERICAN TITLE INSURANCE COMPANY,  
UNITED GENERAL TITLE INSURANCE  
COMPANY, LANDAMERICA FINANCIAL  
GROUP, INC., COMMONWEALTH LAND TITLE  
INSURANCE COMPANY, LAWYERS TITLE  
INSURANCE CORPORATION, TRANSNATION  
TITLE INSURANCE COMPANY, STEWART  
TITLE GUARANTY COMPANY and STEWART  
TITLE INSURANCE COMPANY

Defendants.

Case No.

SACV08-0591 CJC

CLASS ACTION COMPLAINT (FFMA)

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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 INSURANCE COMPANY, NATIONAL TITLE  
 INSURANCE OF NEW YORK, INC., SECURITY  
 UNION TITLE INSURANCE COMPANY, THE  
 FIRST AMERICAN CORPORATION, FIRST  
 AMERICAN TITLE INSURANCE COMPANY,  
 UNITED GENERAL TITLE INSURANCE  
 COMPANY, LANDAMERICA FINANCIAL  
 GROUP, INC., COMMONWEALTH LAND TITLE  
 INSURANCE COMPANY, LAWYERS TITLE  
 INSURANCE CORPORATION, TRANSNATION  
 TITLE INSURANCE COMPANY, STEWART  
 TITLE GUARANTY COMPANY and STEWART  
 TITLE INSURANCE COMPANY

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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1 Plaintiff, Emilse Magana, by her attorneys, on behalf of herself and all others similarly  
2 situated, brings this action for treble damages and injunctive relief under the antitrust laws of the  
3 United States and based on statutes of the State of California against the above named defendants,  
4 demand a trial by jury, and complaining and alleging as follows:

5 **I. INTRODUCTION**

6 1. From the consumer's point of view, title insurance differs greatly from other, more  
7 familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies  
8 protect consumers from an event that may occur in the future, title insurance offers protection from  
9 events that might have occurred in the past.

10 2. Most simply, title insurance is protection purchased against a loss arising from  
11 problems that occurred in the past and may affect the title to the real estate that a consumer is  
12 buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In  
13 fact, almost all title policies are based on a single set of form policies published and maintained by  
14 the national trade association, the American Land Title Association. Furthermore, the end goal of  
15 an exhaustive title search by a title insurer is not to provide coverage for title defects that the search  
16 uncovers, but rather to exclude coverage for any such defects and therefore, further reduce the real  
17 value of the title policy which is written to cover only unknown defects in title at the time of  
18 issuance. As a result, title insurance is a commodity product.

19 3. Even for the savviest of insurance consumers, the purchase of a title insurance  
20 policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of  
21 paperwork and signings that culminate in the closing of a home purchase. Consumers who  
22 normally shop around for their insurance and carefully compare prices, typically emerge from the  
23 closing on their new home holding an insurance policy that they know virtually nothing about and  
24 that in all likelihood, they will never need.

25 4. The title insurance market in California consists of a dozen carriers, ranging in size  
26 from regional companies to national affiliates. However, the market is dominated by four groups  
27 of affiliated companies which, combined, sell over 85 percent of the title insurance policies sold in  
28

1 California and which own and control the title plants in many California counties that every title  
2 insurer must rely on in order issue title policies.

3         5. Title companies, in marked contrast to property, casualty, life and other traditional  
4 insurance carriers, choose not to market their products directly to the consumers who pay for them.  
5 Instead, the title insurance industry operates on what is termed a “reverse competition” model.  
6 Reverse competition means that title companies solicit business referrals from the other major  
7 players in the home purchase scenario – real estate agents and agencies, banks, lenders, builders,  
8 developers and others: middlemen or go-betweens. The title companies pay middlemen for these  
9 referrals in the form of direct payments, advertising expenses, junkets, parties and other kick-backs  
10 and inducements. In addition, middlemen such as Windermere, John L. Scott and Caldwell  
11 Banker-Bain, who themselves control a significant portion of the real estate brokerage market, take  
12 significant ownership stakes in local title agents and affiliates of the major title insurers and  
13 thereby get a direct return in profit from the referral of title business to the title agent whom they  
14 partly or wholly own.

15         6. Reverse competition, as the term suggests, isn’t a model that benefits consumers  
16 through market-driven forces. In fact, consumers are bypassed completely as title companies  
17 spend nearly all of their marketing budgets “winning and dining” real estate agents, banks, lenders,  
18 builders, developers and others in an effort to convince these middlemen to steer their home-  
19 buying clients to their companies for their title insurance needs.

20         7. In some of the major markets in the United States, these same title insurers  
21 collectively meet, and jointly set rates and file these rates with the applicable state insurance  
22 authority. The rates are not subject to any meaningful review or regulation. The companies agree  
23 to fix the price of title insurance far in excess of the risk and loss experience associated with such  
24 insurance. As a result of the joint agreement as to rates, competition is relegated to the middleman.  
25 As a result of their joint rate setting and agreement, no company competes on price to the  
26 consumer.

27         8. Having agreed to fix prices in states where joint rate setting occurs, the companies  
28 agreed to not compete based on price to the consumer in other states, including California, where



1 regulation of filed rates is lax or non-existent. Thus, they agreed to set rates at supra competitive  
2 prices and to compete based on offering inducements to middlemen. In California, in three  
3 successive reports, the Office of the Insurance Commissioner ("OIC") has found an "astonishing  
4 number" of such inducements that are in violation of state law. However, the OIC does not  
5 actively oversee or regulate rates, and, in fact, does not by its own admission have the power to do  
6 so. The absence of regulation has allowed collusive behavior and excessive rates.

7 9. In addition to paying inducements and kick-backs, the title companies and their  
8 agents divide the market of real-estate middlemen through the use of Affiliated Business  
9 Arrangements ("ABAs"), wherein the dominant real estate brokers purchase significant ownership  
10 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for  
11 using the preferred title insurance providers and lock-out independent title insurers.

12 10. In this action, plaintiff, on behalf of a Class of those purchasing title insurance in  
13 California, seek damages arising from defendants' violations of the Sherman Act as well as  
14 California statutory law.

## 15 II. JURISDICTION AND VENUE

16 11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16  
17 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain  
18 injunctive relief and to recover treble damages and the costs of suit, including a reasonable  
19 attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the  
20 Class which she represents by reason of defendants' and their co-conspirators' violations, as  
21 hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

22 12. Defendants transact business, maintain offices or are found within the Central  
23 District of California. The interstate commerce described hereinafter is carried on, in part, within  
24 the Central District of California and the conspiratorial acts herein alleged were carried on, in part,  
25 in the Central District of California.

1     **III.   PARTIES**

2     **A.    Plaintiff**

3           13.    Emilse Magana is an individual residing in the State of California. During the Class  
4   Period, plaintiff purchased title insurance directly from one or more of the defendants herein and  
5   has been injured by reason of the antitrust violations alleged.

6     **B.    Defendants**

7           14.    Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware  
8   corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National  
9   does business in California through one or more of its subsidiaries, including but not limited to,  
10   defendants Fidelity National Title Insurance Company, Ticor Title Insurance Company, Ticor Title  
11   Insurance Company of Florida, National Title Insurance of New York, Inc., Security Union Title  
12   Insurance Company, and Chicago Title Insurance Company. Fidelity National is registered to do  
13   business in California.

14          15.    Defendant Fidelity National Title Insurance Company ("FNTIC") is a California  
15   Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
16   FNTIC does business in California, is a licensed title insurance company in California and is  
17   registered to do business in California.

18          16.    Defendant Ticor Title Insurance Company ("Ticor") is a California Corporation  
19   with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204. Ticor does  
20   business in California, is a licensed title insurance company in California and is registered to do  
21   business in California.

22          17.    Defendant Ticor Title Insurance Company of Florida ("TTICF") is a Florida  
23   corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
24   TTICF does business in California, is a licensed title insurance company in California and is  
25   registered to do business in California.

26          18.    Defendant Chicago Title Insurance Company ("Chicago Title") is a Missouri  
27   Corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.

1 Chicago Title does business in California, is a licensed title insurance company in California and is  
2 registered to do business in California.

3 19. Defendant National Title Insurance of New York, Inc. ("NTINY") is a New York  
4 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
5 NTINY does business in California, is a licensed title insurance company in California and is  
6 registered to do business in California.

7 20. Defendant Security Union Title Insurance Company ("SUTIC") is a California  
8 corporation with its principle place of business at 601 Riverside Ave., Jacksonville, Florida 32204.  
9 SUTIC does business in California, is a licensed title insurance company in California and is  
10 registered to do business in California.

11 21. The Fidelity family of title insurance companies (collectively, "Fidelity") – which  
12 includes defendants Fidelity National, FNTIC, Ticor, TTICF, Chicago Title, NTINY and SUTIC,  
13 and their affiliates – is engaged in selling title insurance to purchasers of commercial and  
14 residential real estate throughout the United States, including California. Nationally, Fidelity  
15 accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly  
16 \$4.6 billion. Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)  
17 and since TIRSA's inception have charged title insurance rates in New York that TIRSA  
18 collectively sets.

19 22. The Fidelity family of title insurance companies and their affiliates are wholly-  
20 owned and controlled by defendant Fidelity National Financial, Inc. Through its subsidiaries,  
21 Fidelity National is a provider of title insurance, specialty insurance, and claims management  
22 services. Fidelity National had 2006 revenues of roughly \$9.4 billion. The Fidelity family of title  
23 insurance companies engaged in the conduct challenged herein with the approval and assent of  
24 defendant Fidelity National.

25 23. Defendant The First American Corporation ("First American") is a California  
26 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. First  
27 American does business in California through one or more of its subsidiaries, including but not  
28

1 limited to, defendants First American Title Insurance Company and United General Title Insurance  
2 Company.

3         24. Defendant First American Title Insurance Company ("FATIC") is a California  
4 corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana, California 92707. FATIC does  
5 business in California, is a licensed title insurance company in California and is registered to do  
6 business in California.  
7

8         25. Defendant United General Title Insurance Company ("UGTIC") is a Colorado  
9 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO 80112. UGTIC does  
10 business in California, is a licensed title insurance company in California and is registered to do  
11 business in California.

12         26. The First American family of title insurance companies (collectively, "First  
13 American") – which includes defendants First American, FATIC and UGTIC, and their affiliates –  
14 is engaged in selling title insurance to purchasers of commercial and residential real estate  
15 throughout the United States, including California. Nationally, First American accounts for  
16 approximately 29 percent of title premiums, which in 2006 amounted to roughly \$4.8 billion. First  
17 American Title was a founding member of TIRSA and since TIRSA's inception has charged title  
18 insurance rates in New York that TIRSA collectively sets.  
19

20         27. The First American family of title insurance companies and their affiliates are  
21 wholly-owned and controlled by defendant The First American Corporation. Through its  
22 subsidiaries, First American is a provider of title insurance, business information, and related  
23 products and services. First American had 2006 revenues of roughly \$8.5 billion. The First  
24 American family of title insurance companies and their affiliates engaged in the conduct  
25 challenged herein with the approval and assent of defendant First American.

26         28. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia  
27 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does  
28 business in California through one or more of its subsidiaries, including but not limited to,

1 defendants Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation  
2 and Transnation Title Insurance Company.

3 29. Defendant Commonwealth Land Title Insurance Company (“CLTIC”) is a  
4 Pennsylvania corporation with its principal place of business at 5600 Cox Road, Glen Allen,  
5 Virginia 23060. CLTIC does business in California, is a licensed title insurance company in  
6 California and is registered to do business in California.

7 30. Defendant Lawyers Title Insurance Corporation (“LTIC”) is a Nebraska corporation  
8 with its principal place of business at 5600 Cox Road, Glen Allen, Virginia 23060. LTIC does  
9 business in California, is a licensed title insurance company in California and is registered to do  
10 business in California.

11 31. Defendant Transnation Title Insurance Company (“TNTIC”) is a Nebraska  
12 corporation with its principal place of business at 5600 Cox Road, Glen Allen, Virginia 23060.  
13 TNTIC does business in California, is a licensed title insurance company in California and is  
14 registered to do business in California.

15 32. The LandAmerica family of title insurance companies (collectively,  
16 “LandAmerica”) – which includes defendants LandAmerica, CLTIC, LTIC and TNTIC, and their  
17 affiliates – is engaged in selling title insurance to purchasers of commercial and residential real  
18 estate throughout the United States, including California. Nationally, LandAmerica accounts for  
19 approximately 19 percent of title premiums, which in 2006 amounted to roughly \$3.15 billion.  
20 Commonwealth and Lawyers Title were founding members of TIRSA and since TIRSA’s  
21 inception have charged title insurance rates in New York that TIRSA collectively sets.

22 33. The LandAmerica family of title insurance companies and their affiliates are  
23 wholly-owned and controlled by defendant Land America Financial Group, Inc. Through its  
24 subsidiaries, LandAmerica is a provider of title insurance and other products and services that  
25 facilitate the purchase, sale, transfer, and financing of residential and commercial real estate.  
26 LandAmerica had 2006 revenues of roughly \$4 billion. The LandAmerica family of title insurance  
27 companies and their affiliates engaged in the conduct challenged herein with the approval of  
28 defendant LandAmerica.



1           34. Defendant Stewart Title Guaranty Company (“STGC”) is a Texas corporation  
2 headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. STGC does business in  
3 California, is a licensed title insurance company in California and is registered to do business in  
4 California.

5           35. Defendant Stewart Title Insurance Company (“STIC”) is a New York corporation  
6 with its principle place of business at 300 E. 42<sup>nd</sup> St., Floor 10, New York, NY 10017. STIC does  
7 business in California, is a licensed title insurance company in California and is registered to do  
8 business in California.

9           36. The Stewart family of title insurance companies (collectively, “Stewart”) – which  
10 includes defendants STGC and STIC, and its affiliates – is engaged in selling title insurance to  
11 purchasers of commercial and residential real estate throughout the United States and California.  
12 Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006  
13 amounted to roughly \$2 billion. Stewart was a founding member of TIRSA and since TIRSA’s  
14 inception has charged title insurance rates in New York that TIRSA collectively sets.

15           37. Together, defendants account for more than 85 percent of the title premiums  
16 consumers pay in California. Nationally, they account for more than 85 percent of title premiums,  
17 which in 2006 amounted to roughly \$14.5 billion. Throughout the relevant damages period,  
18 defendants charged California consumers in California virtually identical title insurance rates.

#### 19   **IV. OTHER ENTITIES**

20           38. TIRSA is a voluntary association of title insurers licensed as a rate service  
21 organization pursuant to Article 23 of the State of New York Insurance Law. TIRSA maintains its  
22 offices in New York City, which until recently were located at the same New York address of  
23 Fidelity Title.

24           39. TIRSA annually compiles from its members statistical data relating to their title  
25 insurance premiums, losses and expenses and submits this information in aggregate form to the  
26 New York Insurance Department. TIRSA also prepares and submits the New York Title Insurance  
27 Rate Manual which sets forth title rates to be charged and rules to be followed by TIRSA’s  
28 members. The Insurance Department has never objected to any of the rates TIRSA has collectively



1 set. Similarly, the California OIC has not actually held a public hearing or conducted any other  
2 review or regulation of the title insurance rates in California for thirty years.

3 40. TIRSA's membership is comprised of defendant insurers and all other title insurers  
4 that are licensed to issue policies in New York. Currently, Fidelity, First American, LandAmerica,  
5 and Stewart collectively represent 14 of TIRSA's 22 members. As such, they comprise a majority  
6 voting block which, according to TIRSA's by-laws, allows them to control the operations of  
7 TIRSA and, in particular, TIRSA's collective rate setting activity.

8 41. Various other persons, firms and corporations not made defendants herein have  
9 participated as co-conspirators with the defendants in the violations alleged herein and have  
10 performed acts and made statements in furtherance thereof.

#### 11 **V. CLASS ACTION ALLEGATIONS**

12 42. Plaintiff brings this action under Rule 23, and particularly subsection (b)(3), of the  
13 Federal Rules of Civil Procedure, on behalf of herself and a Class consisting of all persons  
14 excluding governmental entities, defendants, subsidiaries and affiliates of defendants, who  
15 purchased directly, from one or more of the defendants and/or their co-conspirators title insurance  
16 for residential and commercial property in California during the four year period preceding this  
17 lawsuit and who have sustained damages as a result of the conspiracy herein alleged. The number  
18 of potential Class members is so numerous that joinder is impracticable.

19 43. Plaintiff, as representative of the Class, will fairly and adequately protect the interest  
20 of the Class members. The interests of plaintiff are coincident with, and not antagonistic to, those  
21 of the Class members.

22 44. Except as to the amount of damages each member of the Class has by itself  
23 sustained, all other questions of fact and law are common to the Class, including but not limited to,  
24 the combination and conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act  
25 (15 U.S.C. § 1) and the effects of such violation.

26 45. Plaintiff, along with all other members of the Rule (b)(3) Class, were injured as a  
27 result of paying supracompetitive prices for title insurance in California. These supracompetitive  
28

1 prices were achieved as a result of defendants' illegal price-fixing activities and market allocation  
2 and division.

3 46. Members of the Class include hundreds of thousands, if not millions, of consumers.  
4 They are so numerous that their joinder would be impracticable.

5 47. Plaintiff also brings this action as a class action under Rule 23(b)(2) of the Federal  
6 Rules of Civil Procedure, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Rule  
7 (b)(2) Class includes all members of the (b)(3) Class, and all consumers who are threatened with  
8 injury by the anticompetitive conduct detailed herein.

9 48. Defendants have acted, continued to act, refused to act and continued to refuse to act  
10 on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final  
11 injunctive relief with respect to the Rule (b)(2) Class as a whole.

12 49. Members of the Rule (b)(2) Class include hundreds of thousands, if not millions, of  
13 consumers. They are so numerous that their joinder would be impracticable.

14 50. Common questions of law and fact exist with respect to all Class members and  
15 predominate over any questions solely affecting individual Class members. Among the questions  
16 of law or fact common to the class are the following:

- 17 • Whether defendants have engaged in the alleged illegal price-fixing activity  
18 and market allocation and division.
- 19 • The duration and scope of defendants' alleged illegal price-fixing and market  
20 allocation and division activity.
- 21 • Whether defendants' alleged illegal price-fixing and market allocation and  
22 division has caused higher prices to plaintiffs and other purchasers of title  
23 insurance in California.
- 24 • Whether the Insurance Commissioner has actively supervised defendants'  
25 price fixing and market allocation and division.

26 51. Plaintiff does not have any conflict of interest with other Class members. Plaintiff's  
27 claims are typical of the claims of the Class and they will fairly and adequately reflect the interests  
28 of the Class. Counsel is competent and experienced in federal class action and federal antitrust  
litigation and has been retained to represent the Class.

1           52. This action is superior to any other method for the fair and efficient adjudication of  
2 this legal dispute since joinder of all members is not only impracticable, but impossible. The  
3 damages suffered by certain members of the Class are small in relation to the expense and burden  
4 of individual litigation and therefore it is highly impractical for such Class members to seek redress  
5 for damages resulting from defendants' anticompetitive conduct.

6           53. There will be no extraordinary difficulty in the management of the Class action.

## 7       **VI. TRADE AND COMMERCE**

8           54. During all or part of the period in suit, defendants and their co-conspirators were  
9 sellers of title insurance in California.

10          55. During the period in suit, the defendants sold substantial quantities of title insurance  
11 in a continuous and uninterrupted flow in interstate commerce. In 2005, consumers in the United  
12 States paid \$17 billion for residential title insurance policies.

13          56. During the period in suit, Class members from locations outside California  
14 purchased commercial or residential property and title insurance within California.

15          57. During the period in suit, the defendants were the major sellers of title insurance in  
16 the United States and California. Defendants controlled in excess of 85 percent of the market for  
17 title insurance in the United States and California.

18          58. The activities of the defendants and their co-conspirators, as described herein, were  
19 within the flow of interstate commerce and substantially affected interstate commerce.

## 20       **VII. FACTUAL ALLEGATIONS**

### 21       **A. The Nature of Title Insurance**

22          59. Title insurance is one of most costly items associated with the closing of a real  
23 estate transaction. In California, rates for title insurance are based on a percentage of the total  
24 value of the property being insured. For residential properties, this price ranged in 2005 from  
25 about \$1,010 (for a \$250,000.00) property to \$1,490 (for a \$500,000 property). For more  
26 expensive homes and commercial properties, these prices are significantly higher. This amount  
27 spent on title insurance has risen dramatically over the past decade.

1           60. Title insurance serves an important purpose. It protects the purchaser of a property  
2 from any unidentified defects in the title that would in any way interfere with the full and complete  
3 ownership and use of the property with the ultimate right to resell the property. Title insurance is  
4 required by lenders in most residential and commercial real estate transactions.

5           61. Title insurance companies operate their business on the premise that consumers are  
6 generally uninformed or unaware of all matters concerning title insurance. Consumers are  
7 generally not presented, at any time, with an opportunity to make an independent decision  
8 regarding any aspect of their property title. That decision is typically made for them by their  
9 lawyer, mortgage broker, lender, or realtor. Consequently, for most purchasers, the cost of title  
10 insurance is not challenged. Most consumers do not even become aware of the price they will pay  
11 and to which insurer they will pay it until the actual closing of the real estate transaction. By then  
12 it's too late, consumers can't attempt to negotiate a better title insurance price or alternate provider  
13 for fear of delaying or derailing the entire transaction. There is no shopping around. There is no  
14 negotiation of price.

15           62. This dynamic basically removes the sale of title insurance from the normal  
16 competitive process. Unlike the regular forces of supply and demand that keep most industries and  
17 their pricing in check, the title insurance industry is not subject to any real competitive constraints.  
18 The purchasers of the insurance, in most instances, are not the ones making the purchasing  
19 decisions. And, they are certainly in no position to question the price.

20           63. The most effective, but illegal, way for a particular title insurer to get business is to  
21 encourage those making the purchasing decisions – the real-estate middlemen – to steer business to  
22 that insurer. The best way to so motivate the middlemen is not through lower prices (that they are  
23 not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business  
24 services and other financial enticements. Therefore, it is through higher pricing (which allows for  
25 generous inducements and kick-backs), not lower pricing, that provides the best way for title  
26 insurers to compete and increase their business.

1        **B.      Price-Fixing in the Large Markets**

2            64.      New York is one of several states in which the leading title insurers collectively fix  
3        their prices through a rate-setting organization like TIRSA. There are two principal cost  
4        components that go into TIRSA's calculation. One comprises the risk associated with issuing the  
5        title policy. The other comprises the "agency commissions" paid to title agents.

6            65.      The risk component covers the risk the title insurer bears for any undiscovered  
7        defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of  
8        loss to the insurer. That is because title insurance protects against unknown *prior* events that cause  
9        defects in title. With a proper search and examination of prior ownership records, any such defects  
10       can and almost always are readily identified and excluded from the policy's coverage.  
11       Consequently, the average claim payout on a title insurance policy in the United States amounts to  
12       only about 5 percent of the total premium collected. This is very different from property coverage  
13       (such as auto and home insurance) – which protects against *future* occurrences over which the  
14       insurer has little to no control – where the average claim payout amounts to about 80 percent of the  
15       total premium.

16           66.      The "agency commissions" component of the title insurance rate covers payments  
17       made to title agents. Defendants have an ownership or management stake in many of the title  
18       agencies to which these payments are made. A small portion of these payments is for the search  
19       and exam of prior ownership records of the property being purchased to identify any liens,  
20       encumbrances, burdens, exclusions, or other defects in the title. The search and exam function  
21       does not involve the spreading or underwriting of risk, and title insurers typically outsource this  
22       task to title agents.

23           67.      The remainder, and by far the bulk, of the agency commissions are comprised of  
24       costs unrelated to the issuance of title insurance. These costs include kickbacks and other financial  
25       inducements title insurers provide to title agents and indirectly (through title agents) to the lawyers,  
26       brokers, and lenders who, in reality, are the ones deciding which title insurer to use. These  
27       payments have nothing to do with the issuance of title insurance and are made by title insurers  
28       merely to inflate their revenues and steer business their way.



68. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title insurance premium is based on the so-called "costs" associated with the payment of agency commissions. Only 15 percent is based on costs associated with the risk of loss.

69. TIRSA publishes its final calculated title rates in the New York Title Insurance Rate Manual. These rates are tied to the value of the property being insured. This is so despite the fact that the costs associated with agency commissions are entirely unrelated to the value of the property. Indeed, agency kickbacks and enticements have little to do with producing a particular title policy and provide no value – proportional to property value or otherwise – to the consumer. Even search and exam costs are unrelated to property value. They instead depend on the age of the property, the complexity of the ownership history, and the accessibility of prior ownership records.

70. There are other states in which the defendants overtly meet and agree to fix the rates for title insurance as part of a formal collective rate setting process.

### C. TIRSA's Formation

71. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU") served as the title insurance rate-setting body in New York. NYBTU, along with the title insurance rate setting bureaus in many other states, was disbanded in the mid-1980s in the wake of a Federal Trade Commission ("FTC") challenge to the collective rate setting activity of many of these associations. The FTC's challenge culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of these rating bureaus must be actively supervised by the state.

72. In *Ticor*, the FTC focused its challenge on agency commissions. The FTC contended that the respective state insurance departments merely rubber-stamped this portion of the collectively fixed rates without any independent review or analysis of their reasonableness or cost justification. The Supreme Court agreed with the FTC that this kind of limited state oversight was not sufficient. Rather, to avoid illegal price-fixing liability, the state insurance department has to "exercise[] sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties." *Ticor*, 504 U.S. at 634-35.



73. Following the Supreme Court's instruction in *Ticor*, the Third Circuit on remand in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the collective rate-setting of certain state rating bureaus was improper because it was not actively supervised by the state. According to the circuit court, "[t]he Supreme Court plainly instructed us that a state's rubber stamp is not enough. Active supervision requires the state regulatory authorities' independent review and approval." *Id.* at 1139.

74. Defendants formulated TIRSA's first rate manual and procedure soon after the Supreme Court's *Ticor* decision. Through TIRSA, defendants have set up a rate-setting scheme to get around the rigors of state oversight required by *Ticor*. They have done so by calculating a single rate that comprises both risk and agency commission costs and by outsourcing to title agents the agency commission costs. In this way, defendants avoid providing the Insurance Department with any detailed breakout or backup for the bulk of the costs that make up their collectively fixed rates.

75. TIRSA merely submits an aggregated figure that is supposed to represent the total agency commission costs. Embedded within this figure is the vast quantity of dollars that are funneled to and through the title agencies as kickbacks, financial inducements and other costs unrelated to the issuance of title insurance. Defendants' design in all of this has been to effectively "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from the regulatory scrutiny that *Ticor* demands.

**D. Lack of Regulatory Supervision and Authority in New York and Other States Including California**

76. There is no provision under the New York Insurance Law for TIRSA to include in its collectively fixed rates kickbacks and other agency commission payments unrelated to the issuance of title insurance. Indeed, the New York Insurance Department has openly acknowledged that it lacks the authority to review any agency commission payments. It has likewise recognized that defendants' outsourcing of agency commission costs has prevented it from performing a meaningful review of TIRSA's calculated rates. This was made clear at a November 2006 public hearing the New York Insurance Department held – the first in 15 years – where it questioned

1 TIRSA and its members on TIRSA's failure to provide the Insurance Department with any backup  
2 or detail for agency commissions.

3 77. At the hearing, the Insurance Department conceded that it could not properly  
4 evaluate TIRSA's calculated rates, and that it could only do so if it obtained the detailed cost  
5 information on agency commissions that TIRSA does not provide.

6 78. The Insurance Department's recognition that it is not properly supervising TIRSA's  
7 rate-setting activity is consistent with the April 2007 findings of the U.S. Government  
8 Accountability Office ("GAO") that the title insurance industry is in need of greater state  
9 regulation. The GAO studied the industry conditions of several states, including New York, and  
10 concluded that "state regulators have not collected the type of data, *primarily on title agents' costs*  
11 *and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

12 79. Unchecked by regulatory review and insulated from competition, defendants have  
13 thus been able to collectively fix title insurance rates at supra competitive levels and earn profits  
14 that vastly exceed those contemplated by the Insurance Department or that would have resulted in a  
15 free and open competitive market.

16 80. At the time of TIRSA's formation, the Insurance Department established 5 percent  
17 (of the total premium) as the level of profit to which title insurers are entitled. The Insurance  
18 Department is supposed to carefully analyze TIRSA's rate calculations, and, in particular, its  
19 revenue and cost information, to ensure that this 5 percent profit level is maintained and based on a  
20 reasonable premium. However, without the authority or ability to scrutinize agency commission  
21 costs, the Insurance Department has been unable to perform this function. As a result, defendants  
22 (through TIRSA) have been able to set artificially high title premiums and secure title profits far in  
23 excess of the 5 percent threshold.

24 81. Through an independent investigation conducted over the past several years, the  
25 New York State Attorney General found that for every dollar of insurance premium defendants  
26 collected, of the roughly 15 cents that supposedly accounts for the risk of loss, only 3 cents is paid  
27 out in claims. And, of the roughly 85 cents that supposedly covers agency commissions, only  
28 between 8 and 11 cents goes to costs actually incurred by title agents in producing the title policy.

1 These numbers show that title insurers' collectively fixed rates have resulted in profits that  
2 untethered to and vastly exceed the costs of producing such policies.

3 82. The New York Attorney General's investigation further revealed that what was  
4 largely driving these numbers were the kickbacks and other financial inducements defendants were  
5 funneling to and through title agents to secure more business. As reported at the New York  
6 Insurance Department's 2006 hearing, one title agency's financial statements revealed that it spent  
7 more than \$1 million of these so-called "agency commissions" on items identified as "Christmas",  
8 "automobile expenses", "political contributions", "promotional expenses", and "travel and  
9 entertainment". These expenses are not even remotely related to the issuance of title insurance.

10 83. A report to the California Insurance Commissioner prepared by Barry Birnbaum,  
11 Consulting Economist, in December 2005, found strikingly similar abuses, "We found numerous  
12 examples in California of illegal rebates and kickbacks where the title insurer or the underwritten  
13 title company provides money, free services or other things of value to a real estate agent, a lender  
14 or homebuilder in exchange for business referrals." (*An Analysis of Competition in the California  
15 Title Insurance and Escrow Industry*, December 2005, p. 3)

16 84. All of this "excess money" paid to title agents not only works to steer business to  
17 defendants. It also serves to boost defendants' own profits through the inflated revenues they  
18 obtain to cover these agency payments and through their ownership or management stake in many  
19 of these agencies.

20 85. Defendants are competitors in the sale of title insurance to consumers throughout  
21 the United States. These title insurers have agreed and engaged in concerted efforts to  
22 (i) collectively set and charge uniform and supracompetitive rates for title insurance, (ii) include in  
23 their calculated rates agency commission costs, (iii) embed within these costs payoffs, kickbacks,  
24 and other charges that are unrelated to the issuance of title insurance, and (iv) hide these supposed  
25 "costs" from regulatory scrutiny by funneling them to and through title agents over which the  
26 government agencies have no ability or authority to regulate.

1           86.     The GAO in its 2007 report entitled “Actions Needed to Improve Oversight of the  
2 Title Insurance Industry and Better Protect Consumers” found several indicia of a lack of  
3 competition and questions about the reasonableness of prices including:

- 4           •     Consumers find it difficult to shop for title insurance,  
5                 therefore, they put little pressure on insurers and agents to  
6                 compete based on price;
- 7           •     Title agents do not market to consumers, who pay for title  
8                 insurance, but to those in the position to refer consumers to  
9                 particular title agents, thus creating potential conflicts of  
10                interest;
- 11          •     A number of recent investigations by HUD and state  
12                 regulatory officials have identified instances of alleged illegal  
13                 activities with the title industry that appear to reduce price  
14                 competition and could indicate excessive prices;
- 15          •     As property values or loan amounts increase, prices paid for  
16                 title insurance by consumers appear to increase faster than  
17                 insurers’ and agents’ costs; and
- 18          •     In states where agents’ search and examination services are  
19                 not included in the premium paid by consumers, it is not clear  
20                 that additional amounts paid to title agents are fully supported  
21                 by underlying costs.

22           87.     The GAO visited several states, including California, and found a lack of regulatory  
23 oversight:

24           In the states we visited, we found that regulators did not assess title  
25           agents’ costs to determine whether they were in line with premium  
26           rates; had made only limited efforts to oversee title agents (including  
27           ABAs involving insurers and agents); and, until recently, had taken  
28           few actions against alleged violations of antikickback laws. In part,  
this situation has resulted from a lack of resources and limited  
coordination among different regulators within states. On the federal  
level, authority for alleged violations of section 8 of RESPA,  
including those involving increasingly complex ABAs, is limited to  
seeking injunctive relief. Some state regulators expressed frustration  
with HUD’s level of responsiveness to their requests for help with  
enforcement, and some industry officials said that RESPA rules  
regarding ABAs and referral fees need to be clarified. Industry and  
government stakeholders have proposed several regulatory changes,  
including RESPA reform, strengthened regulation of agents, a

competitor right of action with no monetary penalty, and alternative title insurance models. [*Id.* at 41, footnotes omitted.]

**E. Competition Based on Kickbacks and Inducements But Not Rates**

88. Having agreed to fix or stabilize prices in New York and other states where they overtly meet to promulgate rates, these same defendants then set out to do the same in other states.

89. In other words, as a direct result of these meetings where rates were agreed to, these same defendants agreed, either expressly or tacitly, to not compete on rates in other states as well. To compete on rates in other states could and would imperil their ability to maintain the agreed rate in states like New York.

90. As is the case in New York, a lack of regulatory authority over rates created an environment in which a conspiracy can and did succeed. No agency was examining why all the rates were virtually identical, and no agency was examining whether the costs associated with these premiums were reasonable. This is an environment which is conducive to price fixing.

91. In California, there is a lack of regulatory authority and oversight over title insurance companies. The rates in California are not set as part of a deliberate state intervention and the state does not and cannot meaningfully renew or approve these rates. The rates at issue in this case went into effect without review.

92. In fact, in February of 2007, the Insurance Commissioner of California, Steve Poizner issued a statement concluding “that reasonable price competition does not exist for title and escrow services.” (*Insurance Commissioner Steve Poizner Issues Statement Following Decision by OAL on New Regulations*, California Department of Insurance, February 22, 2007)

**F. Other Indicators of a Lack of Competition and Conditions Conducive to Collusive Rate Setting**

93. In addition to the uniformity of rates, other facts suggest that it is more plausible than not that rates have been set based on an agreement to fix prices.

94. In theory, the chain of title should be documented back to its historic grant of ownership centuries in the past. Fear about a possible title defect in the distant past is widely used as a justification by title agencies when convincing property buyers to purchase an owner policy in



1 addition to the lender policy, which is mandatory to secure a mortgage. The title agency, however,  
2 saves much time and money when the search is limited to one or two transactions. They rely on  
3 the insurance policy to cover the remote chance of missing an earlier but still-valid claim. If such a  
4 claim is asserted and survives the scrutiny of the title insurance company's legal department, the  
5 expected cost of compensation is likely to be less than the sum of added overhead costs of  
6 routinely tracing back every chain of title to the earliest registered owner in the distant past.

7 95. Title insurance industry officials tend to justify the large proportion of the premium  
8 retained by the title abstract and settlement agency (from 60 to more than 90 percent) by the  
9 alleged high cost of title searching back into the distant past. In fact, a high proportion of  
10 noncommercial properties are searched only through the most recent transaction. No information  
11 is available as to what proportion of claims originate in the distant past. The industry has never  
12 published pertinent statistics. It would have a marketing incentive to publish these statistics if the  
13 risk were significant; that it has not published these statistics indicates that the risk probably is only  
14 slightly greater than zero.

15 96. Many U.S. homes are being resold three or four times in twenty-five years. At each  
16 of these occasions, an abstract of title will be prepared on the basis of a more or less thorough  
17 review of the available title records, inheritance records, family records and records of past or  
18 current liens against a property. It is reasonable, therefore, to suspect that the risk of a title defect  
19 will decrease every time a property is sold.

20 97. Title searches have become less labor intensive, especially in large urban counties  
21 and cities. More and more of the information is available online. The statistical likelihood that a  
22 title default would be overlooked is a closely held industry secret, but it appears to be so small that  
23 many transactions are now insured on the basis of a search of the last owner's title history or a  
24 search into transactions that occurred during the last twenty-five to thirty-five years. The evidence  
25 is strong that the title insurance industry has achieved a remarkably high level of loss minimization.  
26 Indeed, the national average recovery for a claim on a title insurance policy is approximately 5% of  
27 the total premium. On the other hand, the national average for property insurance is approximately  
28 80% of the total premium collected.



1           98.    Thus the costs of production have decreased as has the risk of loss yet none of these  
2 factors has resulted in price competition at the consumer level.

3           99.    There is a remarkable absence of rate changes by title insurers over the past five  
4 years, despite declining costs of production, increased number of transactions and increased  
5 revenue per transaction. During a period when costs per unit of production declined significantly,  
6 underwritten title companies and title insurers maintained excessive rates. The prices charged by  
7 title insurers and underwritten title companies were not and are not responsive to the changing  
8 costs of production or increasing revenue per transaction at a given set of rates. Again, this is  
9 indicia of an agreement not to compete based on price.

10          100.   As noted, the title companies engage in illegal rebates and kickbacks where the title  
11 insurer or the underwritten title company provides money, free services or other things of value to  
12 a real estate agent, a lender or homebuilder in exchange for business referrals. These illegal rebates  
13 and kickbacks – a consequence of reverse competition – show that title insurance rates are supra  
14 competitive and that some portion of the overcharge is passed from the underwritten title company  
15 or title insurer to the referrer of business.

16          101.   A lack of competition and the ability to control prices is enhanced by the fact that  
17 there were few title insurer entrants over the period from 1995 through 2005 and the number of  
18 title insurer groups declined as title insurers acquired other title insurers. There were few  
19 underwritten title company entrants over the 2000 to 2005 period and new entrants were controlled  
20 business arrangements whose addition to the market did not result in greater price competition.

21          102.   Access to title plants can be a barrier to entry, but a large barrier to entry exists due  
22 to the established relationships between the entities that can steer the consumer's title and escrow  
23 business and the entities who sell title insurance and escrow services.

24          103.   The title insurance market is highly concentrated – a few title insurers account for  
25 the vast majority of title insurance sales – at both the statewide level and at the county level in  
26 California. For example, three title insurer groups account for 77.4% of the market at a statewide  
27 level. At the county level, each individual market was highly concentrated. The GAO found that  
28

1 First American and Fidelity had a market share of 66 percent. Such a concentration enhances the  
2 ability of companies to fix prices

3 104. The agreement not to compete based on price is also evidenced by the fact that no  
4 company has marketed its services to consumers, the ultimate purchasers of the product. This is in  
5 marked contrast to real insurance, for example, car insurance, where the companies compete  
6 vigorously with well recognized slogans such as State Farm's "Like a Good Neighbor," or  
7 Allstate's "good hands," or the cute (to some) GEICO gecko promising low prices.

8 105. As a result of this lack of competition, California title insurance and escrow services  
9 markets have enjoyed excessive profits, "In a competitive market, sellers earn a reasonable profit.  
10 In the California title insurance and escrow services markets, both the title insurers and the  
11 underwritten title companies realized excessive profits over an extended period of time. In 2003  
12 and 2004, underwritten title companies in California earned after-tax profits of 49.0% and 32.3%  
13 respectively – excessive by any reasonable measure." (*An Analysis of Competition in the California*  
14 *Title Insurance and Escrow Industry*, December 2005, p. 2)

## 15 **VIII. CLAIMS FOR RELIEF**

### 16 **COUNT I**

#### 17 **Violation of the Sherman Act**

18 106. Plaintiff incorporates by reference the preceding allegations.

19 107. Beginning at least as early as May 2004, and continuing thereafter to the present, the  
20 exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a  
21 combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and  
22 commerce in violation of Section 1 of the Sherman Act.

23 108. The aforesaid combination and conspiracy has consisted of a continuing agreement,  
24 understanding and concert of action among the defendants and their co-conspirators, the substantial  
25 terms of which have been:

26 (a) to fix, raise, maintain and stabilize the price of title insurance throughout  
27 California;

1 (b) to fix, raise, maintain and stabilize the terms and conditions of sale of title  
2 insurance in California; and

3 (c) to allocate and divide the market for title insurance in California.

4 109. In the absence of proper regulatory authority and oversight, defendants' conduct  
5 constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to  
6 allocate and divide the title insurance market in California and is a *per se* violation of Section I of  
7 the Sherman Act.

8 110. Defendants' price-fixing, market allocation and division activity has been  
9 continuous throughout the relevant damages period and has been renewed and reinforced annually  
10 through submissions to the OIC of supposed cost and revenue information and its periodic  
11 submissions of rate changes.

12 111. Through their collective price-fixing, market allocation and division and  
13 manipulation of the regulatory process, defendants have harmed competition by charging  
14 consumers supra competitive prices for title insurance in California, evidenced in part by the fact  
15 that the prices are uniformly higher than compared with the cost of providing the insurance.

16 112. The aforesaid combination and conspiracy has had the following effects among  
17 others:

18 (a) price competition in the sale of title insurance has been suppressed,  
19 restrained and eliminated;

20 (b) prices for title insurance have been raised, fixed, maintained and stabilized at  
21 artificially high and non-competitive levels; and

22 (c) purchasers of title insurance have been deprived of the benefit of free and  
23 open competition.

24 113. During the period of the antitrust violations by defendants and their co-conspirators,  
25 plaintiff and each member of the Class she represents, has purchased title insurance and, by reason  
26 of the antitrust violations herein alleged, paid more for such than it would have paid in the absence  
27 of said antitrust violations. As a result, plaintiff and each member of the Class she represents, has  
28 been injured and damaged in an amount presently undetermined.

1 **COUNT II**

2 **Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.***

3 114. Plaintiff incorporates by reference the preceding allegations.

4 115. Defendants conduct as set forth above is in violation of the Cartwright Act of  
5 California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

6 116. As a direct result of defendants' unlawful acts plaintiffs have paid artificially  
7 inflated prices for title insurance and have suffered injury to their business and property.

8 **COUNT III**

9 **(California's Business & Professions Code §§ 17200, *et seq.*)**

10 117. The preceding paragraphs of this Complaint are realleged and incorporated by  
11 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code  
12 §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

13 118. Defendants' statements and representations constitute unfair, unlawful and  
14 deceptive trade practices in violation of the UCL.

15 119. All of the wrongful conduct alleged herein occurs and continues to occur in the  
16 conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized  
17 course of conduct that is repeated in the State of California on hundreds, if not thousands, of  
18 occasions daily.

19 120. Plaintiff has suffered injury in fact and has lost money or property as a result of  
20 defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance  
21 then she would or should have absent the conduct complained of.

22 121. Plaintiff requests that this Court enter such orders or judgment as may be necessary  
23 to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore  
24 to any person in interest any money which may have been acquired by means of such unfair  
25 competition and to disgorge any profits realized by defendants as a result of its unfair, unlawful  
26 and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code  
27 § 3345, and for such other relief as set forth in the Prayer for Relief.  
28

**COUNT IV**

**UNJUST ENRICHMENT**

122. Plaintiff incorporates by reference the preceding allegations.

123. This Cause of Action is pled in the alternative to all claims and/or causes of action at law.

124. Defendant has received a benefit from plaintiff and the Class members in the form of the prices plaintiff and the Class members paid for defendants' title insurance.

125. Defendants are aware of their receipt of the above-described benefit.

126. Defendants received the above-described benefit to the detriment of plaintiff and each of the other members of the Class.

127. Defendants continue to retain the above-described benefit to the detriment of plaintiff and the Class members.

128. As a result of defendants' unjust enrichment, plaintiff and the Class members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands:

A. That the alleged combination and conspiracy among the defendants and their co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

B. That the Court declare that the premiums charged are excessive under state law and order damages;

C. That judgment be entered against defendants, jointly and severally, and in favor of plaintiff, and each member of the Class it represents, for threefold the damages determined to have been sustained by plaintiff, and each member of the Class it represents, together with the cost of suit, including a reasonable attorneys' fee;




D. Each of the defendants, successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, adopting or following any practice, plan, program, or design having a similar purpose or effect in restraining competition; and

E. Such other and further relief as may appear necessary and appropriate.

### **JURY TRIAL DEMANDED**

Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims alleged herein.

DATED: May 27, 2007.



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ti.001



# **EXHIBIT 9**

FILED

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Mark Moynahan, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC.,  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY OF FLORIDA,  
CHICAGO TITLE INSURANCE  
COMPANY, NATIONAL TITLE  
INSURANCE OF NEW YORK, INC.,  
SECURITY UNION TITLE INSURANCE  
COMPANY, THE FIRST AMERICAN  
CORPORATION, FIRST AMERICAN  
TITLE INSURANCE COMPANY, UNITED  
GENERAL TITLE INSURANCE  
COMPANY, LANDAMERICA FINANCIAL  
GROUP, INC., COMMONWEALTH LAND  
TITLE INSURANCE COMPANY,  
LAWYERS TITLE INSURANCE  
CORPORATION, TRANSNATION TITLE  
INSURANCE COMPANY, STEWART  
TITLE GUARANTY COMPANY and  
STEWART TITLE INSURANCE  
COMPANY

Defendants.

Case No.

SACV08-0620

CLASS ACTION  
COMPLAINT

JURY TRIAL DEMANDED

AHS  
(ANx)

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1 Plaintiff, Mark Moynahan, by his attorneys, on behalf of himself and all others  
2 similarly situated, brings this action for treble damages and injunctive relief under  
3 the antitrust laws of the United States and based on statutes of the State of California  
4 against the above named defendants, demand a trial by jury, and complaining and  
5 alleging as follows:  
6

7  
8 **I. INTRODUCTION**

9  
10 1. From the consumer's point of view, title insurance differs greatly from  
11 other, more familiar kinds of insurance. For one thing, while automobile and  
12 homeowner insurance policies protect consumers from an event that may occur in  
13 the future, title insurance offers protection from events that might have occurred in  
14 the past.  
15

16 2. Most simply, title insurance is protection purchased against a loss  
17 arising from problems that occurred in the past and may affect the title to the real  
18 estate that a consumer is buying. Title insurers do not compete on the basis of the  
19 policies or coverage that they provide. In fact, almost all title policies are based on a  
20 single set of form policies published and maintained by the national trade  
21 association, the American Land Title Association. Furthermore, the end goal of an  
22 exhaustive title search by a title insurer is not to provide coverage for title defects  
23 that the search uncovers, but rather to exclude coverage for any such defects and  
24 therefore, further reduce the real value of the title policy which is written to cover  
25  
26  
27  
28

1 only unknown defects in title at the time of issuance. As a result, title insurance is a  
2 commodity product.

3  
4 3. Even for the savviest of insurance consumers, the purchase of a title  
5 insurance policy is just one more expensive step in the dizzying, convoluted and  
6 often confusing flurry of paperwork and signings that culminate in the closing of a  
7 home purchase. Consumers who normally shop around for their insurance and  
8 carefully compare prices, typically emerge from the closing on their new home  
9 holding an insurance policy that they know virtually nothing about and that in all  
10 likelihood, they will never need.  
11  
12

13 4. The title insurance market in California consists of a dozen carriers,  
14 ranging in size from regional companies to national affiliates. However, the market  
15 is dominated by four groups of affiliated companies which, combined, sell over 85  
16 percent of the title insurance policies sold in California and which own and control  
17 the title plants in many California counties that every title insurer must rely on in  
18 order issue title policies.  
19  
20

21 5. Title companies, in marked contrast to property, casualty, life and other  
22 traditional insurance carriers, choose not to market their products directly to the  
23 consumers who pay for them. Instead, the title insurance industry operates on what is  
24 termed a "reverse competition" model. Reverse competition means that title  
25 companies solicit business referrals from the other major players in the home  
26 purchase scenario – real estate agents and agencies, banks, lenders, builders,  
27  
28

1 developers and others: middlemen or go-betweens. The title companies pay  
2 middlemen for these referrals in the form of direct payments, advertising expenses,  
3 junkets, parties and other kick-backs and inducements. In addition, middlemen such  
4 as Windermere, John L. Scott and Caldwell Banker-Bain, who themselves control a  
5 significant portion of the real estate brokerage market, take significant ownership  
6 stakes in local title agents and affiliates of the major title insurers and thereby get a  
7 direct return in profit from the referral of title business to the title agent whom they  
8 partly or wholly own.

11  
12 6. Reverse competition, as the term suggests, isn't a model that benefits  
13 consumers through market-driven forces. In fact, consumers are bypassed  
14 completely as title companies spend nearly all of their marketing budgets "wining  
15 and dining" real estate agents, banks, lenders, builders, developers and others in an  
16 effort to convince these middlemen to steer their home-buying clients to their  
17 companies for their title insurance needs.

19  
20 7. In some of the major markets in the United States, these same title  
21 insurers collectively meet, and jointly set rates and file these rates with the applicable  
22 state insurance authority. The rates are not subject to any meaningful review or  
23 regulation. The companies agree to fix the price of title insurance far in excess of the  
24 risk and loss experience associated with such insurance. As a result of the joint  
25 agreement as to rates, competition is relegated to the middleman. As a result of their  
26 joint rate setting and agreement, no company competes on price to the consumer.



1           8. Having agreed to fix prices in states where joint rate setting occurs, the  
2 companies agreed to not compete based on price to the consumer in other states,  
3 including California, where regulation of filed rates is lax or non-existent. Thus,  
4 they agreed to set rates at supra competitive prices and to compete based on offering  
5 inducements to middlemen. In California, in three successive reports, the Office of  
6 the Insurance Commissioner ("OIC") has found an "astonishing number" of such  
7 inducements that are in violation of state law. However, the OIC does not actively  
8 oversee or regulate rates, and, in fact, does not by its own admission have the power  
9 to do so. The absence of regulation has allowed collusive behavior and excessive  
10 rates.  
11

12           9. In addition to paying inducements and kick-backs, the title companies  
13 and their agents divide the market of real-estate middlemen through the use of  
14 Affiliated Business Arrangements ("ABAs"), wherein the dominant real estate  
15 brokers purchase significant ownership stakes in favored title insurance affiliates.  
16 The real estate brokers then reward their associates for using the preferred title  
17 insurance providers and lock-out independent title insurers.  
18

19           10. In this action, plaintiff, on behalf of a Class of those purchasing title  
20 insurance in California, seek damages arising from defendants' violations of the  
21 Sherman Act as well as California statutory law.  
22  
23  
24  
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26  
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28

## II. JURISDICTION AND VENUE

11. This Complaint is filed and these proceedings are instituted under Sections 4 and 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain injunctive relief and to recover treble damages and the costs of suit, including a reasonable attorneys' fee, against defendants for the injuries sustained by plaintiff and the members of the Class which she represents by reason of defendants' and their co-conspirators' violations, as hereinafter alleged, of Section I of the Sherman Act (15 U.S.C. § 1).

12. Defendants transact business, maintain offices or are found within the Central District of California. The interstate commerce described hereinafter is carried on, in part, within the Central District of California and the conspiratorial acts herein alleged were carried on, in part, in the Central District of California.

## III. PARTIES

### A. Plaintiff

13. Mark Moynahan, during the Class Period, purchased title insurance directly from Chicago Title, one of the defendants herein and has been injured by reason of the antitrust violations alleged.

1     **B.     Defendants**

2  
3           14.     Defendant Fidelity National Financial, Inc. ("Fidelity National") is a  
4     Delaware corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida  
5     32204. Fidelity National does business in California through one or more of its  
6     subsidiaries, including but not limited to, defendants Fidelity National Title  
7     Insurance Company, Ticor Title Insurance Company, Ticor Title Insurance Company  
8     of Florida, National Title Insurance of New York, Inc., Security Union Title  
9     Insurance Company, and Chicago Title Insurance Company. Fidelity National is  
10    registered to do business in California.  
11  
12

13  
14           15.     Defendant Fidelity National Title Insurance Company ("FNTIC") is a  
15    California Corporation with its principle place of business at 601 Riverside Ave.,  
16    Jacksonville, Florida 32204. FNTIC does business in California, is a licensed title  
17    insurance company in California and is registered to do business in California.  
18

19           16.     Defendant Ticor Title Insurance Company ("Ticor") is a California  
20    Corporation with its principle place of business at 601 Riverside Ave., Jacksonville,  
21    Florida 32204. Ticor does business in California, is a licensed title insurance  
22    company in California and is registered to do business in California.  
23

24           17.     Defendant Ticor Title Insurance Company of Florida ("TTICF") is a  
25    Florida corporation with its principle place of business at 601 Riverside Ave.,  
26  
27  
28

1 Jacksonville, Florida 32204. TTICF does business in California, is a licensed title  
2 insurance company in California and is registered to do business in California.

3  
4 18. Defendant Chicago Title Insurance Company ("Chicago Title") is a  
5 Missouri Corporation with its principle place of business at 601 Riverside Ave.,  
6 Jacksonville, Florida 32204. Chicago Title does business in California, is a licensed  
7 title insurance company in California and is registered to do business in California.  
8

9 19. Defendant National Title Insurance of New York, Inc. ("NTINY") is a  
10 New York corporation with its principle place of business at 601 Riverside Ave.,  
11 Jacksonville, Florida 32204. NTINY does business in California, is a licensed title  
12 insurance company in California and is registered to do business in California.  
13

14 20. Defendant Security Union Title Insurance Company ("SUTIC") is a  
15 California corporation with its principle place of business at 601 Riverside Ave.,  
16 Jacksonville, Florida 32204. SUTIC does business in California, is a licensed title  
17 insurance company in California and is registered to do business in California.  
18

19 21. The Fidelity family of title insurance companies (collectively,  
20 "Fidelity") – which includes defendants Fidelity National, FNTIC, Ticor, TTICF,  
21 Chicago Title, NTINY and SUTIC, and their affiliates – is engaged in selling title  
22 insurance to purchasers of commercial and residential real estate throughout the  
23 United States, including California. Nationally, Fidelity accounts for approximately  
24 27 percent of title premiums, which in 2006 amounted to roughly \$4.6 billion.  
25 Fidelity, Chicago Title and Ticor were founding members of TIRSA (defined below)  
26  
27  
28

1 and since TIRSA's inception have charged title insurance rates in New York that  
2 TIRSA collectively sets.

3  
4 22. The Fidelity family of title insurance companies and their affiliates are  
5 wholly-owned and controlled by defendant Fidelity National Financial, Inc.  
6 Through its subsidiaries, Fidelity National is a provider of title insurance, specialty  
7 insurance, and claims management services. Fidelity National had 2006 revenues of  
8 roughly \$9.4 billion. The Fidelity family of title insurance companies engaged in the  
9 conduct challenged herein with the approval and assent of defendant Fidelity  
10 National.  
11  
12

13 23. Defendant The First American Corporation ("First American") is a  
14 California corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana,  
15 California 92707. First American does business in California through one or more of  
16 its subsidiaries, including but not limited to, defendants First American Title  
17 Insurance Company and United General Title Insurance Company.  
18  
19

20 24. Defendant First American Title Insurance Company ("FATIC") is a  
21 California corporation with its headquarters at 1<sup>st</sup> American Way, Santa Ana,  
22 California 92707. FATIC does business in California, is a licensed title insurance  
23 company in California and is registered to do business in California.  
24

25 25. Defendant United General Title Insurance Company ("UGTIC") is a  
26 Colorado corporation located at 8310 S. Valley Highway, Suite 130, Englewood, CO  
27  
28

1 80112. UGTIC does business in California, is a licensed title insurance company in  
2 California and is registered to do business in California.

3  
4 26. The First American family of title insurance companies (collectively,  
5 “First American”) – which includes defendants First American, FATIC and UGTIC,  
6 and their affiliates – is engaged in selling title insurance to purchasers of commercial  
7 and residential real estate throughout the United States, including California.  
8  
9 Nationally, First American accounts for approximately 29 percent of title premiums,  
10 which in 2006 amounted to roughly \$4.8 billion. First American Title was a  
11 founding member of TIRSA and since TIRSA’s inception has charged title insurance  
12 rates in New York that TIRSA collectively sets.  
13

14 27. The First American family of title insurance companies and their  
15 affiliates are wholly-owned and controlled by defendant The First American  
16 Corporation. Through its subsidiaries, First American is a provider of title insurance,  
17 business information, and related products and services. First American had 2006  
18 revenues of roughly \$8.5 billion. The First American family of title insurance  
19 companies and their affiliates engaged in the conduct challenged herein with the  
20 approval and assent of defendant First American.  
21  
22

23  
24 28. Defendant LandAmerica Financial Group, Inc. (“LandAmerica”) is a  
25 Virginia corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060.  
26 LandAmerica does business in California through one or more of its subsidiaries,  
27 including but not limited to, defendants Commonwealth Land Title Insurance  
28



1 Company, Lawyers Title Insurance Corporation and Transnation Title Insurance  
2 Company.

3  
4 29. Defendant Commonwealth Land Title Insurance Company ("CLTIC")  
5 is a Pennsylvania corporation with its principal place of business at 5600 Cox Road,  
6 Glen Allen, Virginia 23060. CLTIC does business in California, is a licensed title  
7 insurance company in California and is registered to do business in California.  
8

9 30. Defendant Lawyers Title Insurance Corporation ("LTIC") is a Nebraska  
10 corporation with its principal place of business at 5600 Cox Road, Glen Allen,  
11 Virginia 23060. LTIC does business in California, is a licensed title insurance  
12 company in California and is registered to do business in California.  
13

14 31. Defendant Transnation Title Insurance Company ("TNTIC") is a  
15 Nebraska corporation with its principal place of business at 5600 Cox Road, Glen  
16 Allen, Virginia 23060. TNTIC does business in California, is a licensed title  
17 insurance company in California and is registered to do business in California.  
18

19 32. The LandAmerica family of title insurance companies (collectively,  
20 "LandAmerica") – which includes defendants LandAmerica, CLTIC, LTIC and  
21 TNTIC, and their affiliates – is engaged in selling title insurance to purchasers of  
22 commercial and residential real estate throughout the United States, including  
23 California. Nationally, LandAmerica accounts for approximately 19 percent of title  
24 premiums, which in 2006 amounted to roughly \$3.15 billion. Commonwealth and  
25  
26  
27  
28

1 Lawyers Title were founding members of TIRSA and since TIRSA's inception have  
2 charged title insurance rates in New York that TIRSA collectively sets.

3  
4 33. The LandAmerica family of title insurance companies and their  
5 affiliates are wholly-owned and controlled by defendant Land America Financial  
6 Group, Inc. Through its subsidiaries, LandAmerica is a provider of title insurance  
7 and other products and services that facilitate the purchase, sale, transfer, and  
8 financing of residential and commercial real estate. LandAmerica had 2006  
9 revenues of roughly \$4 billion. The LandAmerica family of title insurance  
10 companies and their affiliates engaged in the conduct challenged herein with the  
11 approval of defendant LandAmerica.

12  
13  
14 34. Defendant Stewart Title Guaranty Company ("STGC") is a Texas  
15 corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056.  
16 STGC does business in California, is a licensed title insurance company in California  
17 and is registered to do business in California.

18  
19  
20 35. Defendant Stewart Title Insurance Company ("STIC") is a New York  
21 corporation with its principle place of business at 300 E. 42<sup>nd</sup> St., Floor 10, New  
22 York, NY 10017. STIC does business in California, is a licensed title insurance  
23 company in California and is registered to do business in California.

24  
25 36. The Stewart family of title insurance companies (collectively,  
26 "Stewart") – which includes defendants STGC and STIC, and its affiliates – is  
27 engaged in selling title insurance to purchasers of commercial and residential real  
28

1 estate throughout the United States and California. Nationally, Stewart accounts for  
2 approximately 12 percent of title premiums, which in 2006 amounted to roughly \$2  
3 billion. Stewart was a founding member of TIRSA and since TIRSA's inception has  
4 charged title insurance rates in New York that TIRSA collectively sets.  
5

6 37. Together, defendants account for more than 85 percent of the title  
7 premiums consumers pay in California. Nationally, they account for more than 85  
8 percent of title premiums, which in 2006 amounted to roughly \$14.5 billion.  
9 Throughout the relevant damages period, defendants charged California consumers  
10 in California virtually identical title insurance rates.  
11  
12

#### 13 **IV. OTHER ENTITIES**

14

15 38. TIRSA is a voluntary association of title insurers licensed as a rate  
16 service organization pursuant to Article 23 of the State of New York Insurance Law.  
17 TIRSA maintains its offices in New York City, which until recently were located at  
18 the same New York address of Fidelity Title.  
19

20 39. TIRSA annually compiles from its members statistical data relating to  
21 their title insurance premiums, losses and expenses and submits this information in  
22 aggregate form to the New York Insurance Department. TIRSA also prepares and  
23 submits the New York Title Insurance Rate Manual which sets forth title rates to be  
24 charged and rules to be followed by TIRSA's members. The Insurance Department  
25 has never objected to any of the rates TIRSA has collectively set. Similarly, the  
26  
27  
28

1 California OIC has not actually held a public hearing or conducted any other review  
2 or regulation of the title insurance rates in California for thirty years.

3  
4 40. TIRSA's membership is comprised of defendant insurers and all other  
5 title insurers that are licensed to issue policies in New York. Currently, Fidelity,  
6 First American, LandAmerica, and Stewart collectively represent 14 of TIRSA's 22  
7 members. As such, they comprise a majority voting block which, according to  
8 TIRSA's by-laws, allows them to control the operations of TIRSA and, in particular,  
9 TIRSA's collective rate setting activity.  
10

11  
12 41. Various other persons, firms and corporations not made defendants  
13 herein have participated as co-conspirators with the defendants in the violations  
14 alleged herein and have performed acts and made statements in furtherance thereof.  
15

## 16 **V. CLASS ACTION ALLEGATIONS**

17  
18 42. Plaintiff brings this action under Rule 23, and particularly subsection  
19 (b)(3), of the Federal Rules of Civil Procedure, on behalf of herself and a Class  
20 consisting of all persons excluding governmental entities, defendants, subsidiaries  
21 and affiliates of defendants, who purchased directly, from one or more of the  
22 defendants and/or their co-conspirators title insurance for residential and commercial  
23 property in California beginning in March 2004 and who have sustained damages as  
24 a result of the conspiracy herein alleged. The number of potential Class members is  
25 so numerous that joinder is impracticable.  
26  
27  
28

1           43. Plaintiff, as representative of the Class, will fairly and adequately  
2 protect the interest of the Class members. The interests of plaintiff are coincident  
3 with, and not antagonistic to, those of the Class members.  
4

5           44. Except as to the amount of damages each member of the Class has by  
6 itself sustained, all other questions of fact and law are common to the Class,  
7 including but not limited to, the combination and conspiracy hereinafter alleged, the  
8 violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and the effects of such  
9 violation.  
10

11           45. Plaintiff, along with all other members of the Rule (b)(3) Class, were  
12 injured as a result of paying supracompetitive prices for title insurance in California.  
13 These supracompetitive prices were achieved as a result of defendants' illegal price-  
14 fixing activities and market allocation and division.  
15  
16

17           46. Members of the Class include hundreds of thousands, if not millions, of  
18 consumers. They are so numerous that their joinder would be impracticable.  
19

20           47. Plaintiff also brings this action as a class action under Rule 23(b)(2) of  
21 the Federal Rules of Civil Procedure, for violations of Section 1 of the Sherman Act,  
22 15 U.S.C. § 1. The Rule (b)(2) Class includes all members of the (b)(3) Class, and  
23 all consumers who are threatened with injury by the anticompetitive conduct detailed  
24 herein.  
25

26           48. Defendants have acted, continued to act, refused to act and continued to  
27 refuse to act on grounds generally applicable to the Rule (b)(2) Class, thereby  
28

1 making appropriate final injunctive relief with respect to the Rule (b)(2) Class as a  
2 whole.

3  
4 49. Members of the Rule (b)(2) Class include hundreds of thousands, if not  
5 millions, of consumers. They are so numerous that their joinder would be  
6 impracticable.

7  
8 50. Common questions of law and fact exist with respect to all Class  
9 members and predominate over any questions solely affecting individual Class  
10 members. Among the questions of law or fact common to the class are the  
11 following:  
12

- 13 • Whether defendants have engaged in the alleged illegal price-fixing  
14 activity and market allocation and division.  
15
- 16 • The duration and scope of defendants' alleged illegal price-fixing  
17 and market allocation and division activity.  
18
- 19 • Whether defendants' alleged illegal price-fixing and market  
20 allocation and division has caused higher prices to plaintiffs and  
21 other purchasers of title insurance in California.  
22
- 23 • Whether the Insurance Commissioner has actively supervised  
24 defendants' price fixing and market allocation and division.  
25  
26  
27  
28



1           51. Plaintiff does not have any conflict of interest with other Class  
2 members. Plaintiff's claims are typical of the claims of the Class and they will fairly  
3 and adequately reflect the interests of the Class. Counsel is competent and  
4 experienced in federal class action and federal antitrust litigation and has been  
5 retained to represent the Class.  
6

7           52. This action is superior to any other method for the fair and efficient  
8 adjudication of this legal dispute since joinder of all members is not only  
9 impracticable, but impossible. The damages suffered by certain members of the  
10 Class are small in relation to the expense and burden of individual litigation and  
11 therefore it is highly impractical for such Class members to seek redress for damages  
12 resulting from defendants' anticompetitive conduct.  
13

14           53. There will be no extraordinary difficulty in the management of the Class  
15 action.  
16

## 17 **VI. TRADE AND COMMERCE**

18           54. During all or part of the period in suit, defendants and their co-  
19 conspirators were sellers of title insurance in California.  
20

21           55. During the period in suit, the defendants sold substantial quantities of  
22 title insurance in a continuous and uninterrupted flow in interstate commerce. In  
23 2005, consumers in the United States paid \$17 billion for residential title insurance  
24 policies.  
25  
26  
27  
28

1           56. During the period in suit, Class members from locations outside  
2 California purchased commercial or residential property and title insurance within  
3 California.  
4

5           57. During the period in suit, the defendants were the major sellers of title  
6 insurance in the United States and California. Defendants controlled in excess of  
7  
8 85 percent of the market for title insurance in the United States and California.

9           58. The activities of the defendants and their co-conspirators, as described  
10 herein, were within the flow of interstate commerce and substantially affected  
11 interstate commerce.  
12

## 13 **VII. FACTUAL ALLEGATIONS**

### 14 **A. The Nature of Title Insurance**

15  
16  
17           59. Title insurance is one of most costly items associated with the closing of  
18 a real estate transaction. In California, rates for title insurance are based on a  
19 percentage of the total value of the property being insured. For residential  
20 properties, this price ranged in 2005 from about \$1,010 (for a \$250,000.00) property  
21 to \$1,490 (for a \$500,000 property). For more expensive homes and commercial  
22 properties, these prices are significantly higher. This amount spent on title insurance  
23 has risen dramatically over the past decade.  
24  
25

26           60. Title insurance serves an important purpose. It protects the purchaser of  
27 a property from any unidentified defects in the title that would in any way interfere  
28

1 with the full and complete ownership and use of the property with the ultimate right  
2 to resell the property. Title insurance is required by lenders in most residential and  
3 commercial real estate transactions.  
4

5 61. Title insurance companies operate their business on the premise that  
6 consumers are generally uninformed or unaware of all matters concerning title  
7 insurance. Consumers are generally not presented, at any time, with an opportunity  
8 to make an independent decision regarding any aspect of their property title. That  
9 decision is typically made for them by their lawyer, mortgage broker, lender, or  
10 realtor. Consequently, for most purchasers, the cost of title insurance is not  
11 challenged. Most consumers do not even become aware of the price they will pay  
12 and to which insurer they will pay it until the actual closing of the real estate  
13 transaction. By then it's too late, consumers can't attempt to negotiate a better title  
14 insurance price or alternate provider for fear of delaying or derailing the entire  
15 transaction. There is no shopping around. There is no negotiation of price.  
16  
17  
18  
19

20 62. This dynamic basically removes the sale of title insurance from the  
21 normal competitive process. Unlike the regular forces of supply and demand that  
22 keep most industries and their pricing in check, the title insurance industry is not  
23 subject to any real competitive constraints. The purchasers of the insurance, in most  
24 instances, are not the ones making the purchasing decisions. And, they are certainly  
25 in no position to question the price.  
26  
27  
28

63. The most effective, but illegal, way for a particular title insurer to get business is to encourage those making the purchasing decisions – the real-estate middlemen – to steer business to that insurer. The best way to so motivate the middlemen is not through lower prices (that they are not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, meals, business services and other financial enticements. Therefore, it is through higher pricing (which allows for generous inducements and kick-backs), not lower pricing, that provides the best way for title insurers to compete and increase their business.

#### **B. Price-Fixing in the Large Markets**

64. New York is one of several states in which the leading title insurers collectively fix their prices through a rate-setting organization like TIRSA. There are two principal cost components that go into TIRSA's calculation. One comprises the risk associated with issuing the title policy. The other comprises the "agency commissions" paid to title agents.

65. The risk component covers the risk the title insurer bears for any undiscovered defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of loss to the insurer. That is because title insurance protects against unknown *prior* events that cause defects in title. With a proper search and examination of prior ownership records, any such defects can and almost always are readily identified and excluded from the policy's coverage.

1 Consequently, the average claim payout on a title insurance policy in the United  
2 States amounts to only about 5 percent of the total premium collected. This is very  
3 different from property coverage (such as auto and home insurance) – which protects  
4 against *future* occurrences over which the insurer has little to no control – where the  
5 average claim payout amounts to about 80 percent of the total premium.  
6

7  
8 66. The “agency commissions” component of the title insurance rate covers  
9 payments made to title agents. Defendants have an ownership or management stake  
10 in many of the title agencies to which these payments are made. A small portion of  
11 these payments is for the search and exam of prior ownership records of the property  
12 being purchased to identify any liens, encumbrances, burdens, exclusions, or other  
13 defects in the title. The search and exam function does not involve the spreading or  
14 underwriting of risk, and title insurers typically outsource this task to title agents.  
15

16  
17 67. The remainder, and by far the bulk, of the agency commissions are  
18 comprised of costs unrelated to the issuance of title insurance. These costs include  
19 kickbacks and other financial inducements title insurers provide to title agents and  
20 indirectly (through title agents) to the lawyers, brokers, and lenders who, in reality,  
21 are the ones deciding which title insurer to use. These payments have nothing to do  
22 with the issuance of title insurance and are made by title insurers merely to inflate  
23 their revenues and steer business their way.  
24

25  
26 68. Under TIRSA’s collective rate setting regime, roughly 85 percent of the  
27 total title insurance premium is based on the so-called “costs” associated with the  
28

1 payment of agency commissions. Only 15 percent is based on costs associated with  
2 the risk of loss.

3  
4 69. TIRSA publishes its final calculated title rates in the New York Title  
5 Insurance Rate Manual. These rates are tied to the value of the property being  
6 insured. This is so despite the fact that the costs associated with agency  
7 commissions are entirely unrelated to the value of the property. Indeed, agency  
8 kickbacks and enticements have little to do with producing a particular title policy  
9 and provide no value – proportional to property value or otherwise – to the  
10 consumer. Even search and exam costs are unrelated to property value. They  
11 instead depend on the age of the property, the complexity of the ownership history,  
12 and the accessibility of prior ownership records.

13  
14  
15  
16 70. There are other states in which the defendants overtly meet and agree to  
17 fix the rates for title insurance as part of a formal collective rate setting process.

### 18 **C. TIRSA's Formation**

19  
20 71. Prior to TIRSA, the New York Board of Title Underwriters ("NYBTU")  
21 served as the title insurance rate-setting body in New York. NYBTU, along with the  
22 title insurance rate setting bureaus in many other states, was disbanded in the mid-  
23 1980s in the wake of a Federal Trade Commission ("FTC") challenge to the  
24 collective rate setting activity of many of these associations. The FTC's challenge  
25 culminated in *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), where the Supreme  
26  
27  
28



1 Court held that to avoid *per se* illegal price fixing liability, the rate setting activity of  
2 these rating bureaus must be actively supervised by the state.

3  
4 72. In *Ticor*, the FTC focused its challenge on agency commissions. The  
5 FTC contended that the respective state insurance departments merely rubber-  
6 stamped this portion of the collectively fixed rates without any independent review  
7 or analysis of their reasonableness or cost justification. The Supreme Court agreed  
8 with the FTC that this kind of limited state oversight was not sufficient. Rather, to  
9 avoid illegal price-fixing liability, the state insurance department has to  
10 “exercise[] sufficient independent judgment and control so that the details of the rates  
11 or prices have been established as a product of deliberate state intervention, not  
12 simply by agreement among private parties.” *Ticor*, 504 U.S. at 634-35.

13  
14 73. Following the Supreme Court’s instruction in *Ticor*, the Third Circuit  
15 on remand in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the  
16 FTC’s finding that the collective rate-setting of certain state rating bureaus was  
17 improper because it was not actively supervised by the state. According to the  
18 circuit court, “[t]he Supreme Court plainly instructed us that a state’s rubber stamp is  
19 not enough. Active supervision requires the state regulatory authorities’ independent  
20 review and approval.” *Id.* at 1139.

21  
22 74. Defendants formulated TIRSA’s first rate manual and procedure soon  
23 after the Supreme Court’s *Ticor* decision. Through TIRSA, defendants have set up a  
24 rate-setting scheme to get around the rigors of state oversight required by *Ticor*.

1 They have done so by calculating a single rate that comprises both risk and agency  
2 commission costs and by outsourcing to title agents the agency commission costs. In  
3 this way, defendants avoid providing the Insurance Department with any detailed  
4 breakout or backup for the bulk of the costs that make up their collectively fixed  
5 rates.  
6

7  
8 75. TIRSA merely submits an aggregated figure that is supposed to  
9 represent the total agency commission costs. Embedded within this figure is the vast  
10 quantity of dollars that are funneled to and through the title agencies as kickbacks,  
11 financial inducements and other costs unrelated to the issuance of title insurance.  
12 Defendants' design in all of this has been to effective "hide" the cost basis for their  
13 artificially high and collectively fixed title insurance premiums from the regulatory  
14 scrutiny that *Ticor* demands.  
15  
16

17 **D. Lack of Regulatory Supervision and Authority in New York and Other**  
18 **States Including California**  
19

20 76. There is no provision under the New York Insurance Law for TIRSA to  
21 include in its collectively fixed rates kickbacks and other agency commission  
22 payments unrelated to the issuance of title insurance. Indeed, the New York  
23 Insurance Department has openly acknowledged that it lacks the authority to review  
24 any agency commission payments. It has likewise recognized that defendants'  
25 outsourcing of agency commission costs has prevented it from performing a  
26  
27  
28

1 meaningful review of TIRSA's calculated rates. This was made clear at a November  
2 2006 public hearing the New York Insurance Department held – the first in 15 years  
3 – where it questioned TIRSA and its members on TIRSA's failure to provide the  
4 Insurance Department with any backup or detail for agency commissions.  
5

6 77. At the hearing, the Insurance Department conceded that it could not  
7 properly evaluate TIRSA's calculated rates, and that it could only do so if it obtained  
8 the detailed cost information on agency commissions that TIRSA does not provide.  
9

10 78. The Insurance Department's recognition that it is not properly  
11 supervising TIRSA's rate-setting activity is consistent with the April 2007 findings  
12 of the U.S. Government Accountability Office ("GAO") that the title insurance  
13 industry is in need of greater state regulation. The GAO studied the industry  
14 conditions of several states, including New York, and concluded that "state  
15 regulators have not collected the type of data, *primarily on title agents' costs and*  
16 *operations*, needed to analyze premium prices and underlying costs." (Emphasis  
17 added.)  
18  
19  
20

21 79. Unchecked by regulatory review and insulated from competition,  
22 defendants have thus been able to collectively fix title insurance rates at supra  
23 competitive levels and earn profits that vastly exceed those contemplated by the  
24 Insurance Department or that would have resulted in a free and open competitive  
25 market.  
26  
27  
28

1           80. At the time of TIRSA's formation, the Insurance Department  
2 established 5 percent (of the total premium) as the level of profit to which title  
3 insurers are entitled. The Insurance Department is supposed to carefully analyze  
4 TIRSA's rate calculations, and, in particular, its revenue and cost information, to  
5 ensure that this 5 percent profit level is maintained and based on a reasonable  
6 premium. However, without the authority or ability to scrutinize agency commission  
7 costs, the Insurance Department has been unable to perform this function. As a  
8 result, defendants (through TIRSA) have been able to set artificially high title  
9 premiums and secure title profits far in excess of the 5 percent threshold.  
10  
11  
12

13           81. Through an independent investigation conducted over the past several  
14 years, the New York State Attorney General found that for every dollar of insurance  
15 premium defendants collected, of the roughly 15 cents that supposedly accounts for  
16 the risk of loss, only 3 cents is paid out in claims. And, of the roughly 85 cents that  
17 supposedly covers agency commissions, only between 8 and 11 cents goes to costs  
18 actually incurred by title agents in producing the title policy. These numbers show  
19 that title insurers' collectively fixed rates have resulted in profits that untethered to  
20 and vastly exceed the costs of producing such policies.  
21  
22  
23

24           82. The New York Attorney General's investigation further revealed that  
25 what was largely driving these numbers were the kickbacks and other financial  
26 inducements defendants were funneling to and through title agents to secure more  
27 business. As reported at the New York Insurance Department's 2006 hearing, one  
28

1 title agency's financial statements revealed that it spent more than \$1 million of these  
2 so-called "agency commissions" on items identified as "Christmas", "automobile  
3 expenses", "political contributions", "promotional expenses", and "travel and  
4 entertainment". These expenses are not even remotely related to the issuance of title  
5 insurance.  
6

7  
8 83. A report to the California Insurance Commissioner prepared by Barry  
9 Birnbaum, Consulting Economist, in December 2005, found strikingly similar  
10 abuses, "We found numerous examples in California of illegal rebates and kickbacks  
11 where the title insurer or the underwritten title company provides money, free  
12 services or other things of value to a real estate agent, a lender or homebuilder in  
13 exchange for business referrals." (*An Analysis of Competition in the California Title*  
14 *Insurance and Escrow Industry*, December 2005, p. 3)  
15  
16

17 84. All of this "excess money" paid to title agents not only works to steer  
18 business to defendants. It also serves to boost defendants' own profits through the  
19 inflated revenues they obtain to cover these agency payments and through their  
20 ownership or management stake in many of these agencies.  
21

22 85. Defendants are competitors in the sale of title insurance to consumers  
23 throughout the United States. These title insurers have agreed and engaged in  
24 concerted efforts to (i) collectively set and charge uniform and supracompetitive  
25 rates for title insurance, (ii) include in their calculated rates agency commission  
26 costs, (iii) embed within these costs payoffs, kickbacks, and other charges that are  
27  
28

1 unrelated to the issuance of title insurance, and (iv) hide these supposed "costs" from  
2 regulatory scrutiny by funneling them to and through title agents over which the  
3 government agencies have no ability or authority to regulate.  
4

5 86. The GAO in its 2007 report entitled "Actions Needed to Improve  
6 Oversight of the Title Insurance Industry and Better Protect Consumers" found  
7 several indicia of a lack of competition and questions about the reasonableness of  
8 prices including:  
9

- 10 • Consumers find it difficult to shop for title  
11 insurance, therefore, they put little pressure on  
12 insurers and agents to compete based on price;  
13
- 14 • Title agents do not market to consumers, who pay  
15 for title insurance, but to those in the position to  
16 refer consumers to particular title agents, thus  
17 creating potential conflicts of interest;  
18
- 19 • A number of recent investigations by HUD and state  
20 regulatory officials have identified instances of  
21 alleged illegal activities with the title industry that  
22 appear to reduce price competition and could  
23 indicate excessive prices;  
24  
25  
26  
27  
28



- As property values or loan amounts increase, prices paid for title insurance by consumers appear to increase faster than insurers' and agents' costs; and
- In states where agents' search and examination services are not included in the premium paid by consumers, it is not clear that additional amounts paid to title agents are fully supported by underlying costs.

87. The GAO visited several states, including California, and found a lack of regulatory oversight:

In the states we visited, we found that regulators did not assess title agents' costs to determine whether they were in line with premium rates; had made only limited efforts to oversee title agents (including ABAs involving insurers and agents); and, until recently, had taken few actions against alleged violations of antikickback laws. In part, this situation has resulted from a lack of resources and limited coordination among different regulators within states. On the federal level, authority for alleged violations of section 8 of RESPA, including those involving increasingly complex ABAs, is limited to seeking injunctive relief. Some state regulators expressed frustration with HUD's level of responsiveness to their requests for help with enforcement, and some industry officials said that RESPA rules regarding ABAs and referral fees need to be clarified. Industry and government stakeholders have proposed several regulatory changes, including RESPA reform, strengthened regulation of agents, a competitor right of action with no monetary

1 penalty, and alternative title insurance models. [*Id.* at 41,  
2 footnotes omitted.]

3 **E. Competition Based on Kickbacks and Inducements But Not Rates**

4  
5 88. Having agreed to fix or stabilize prices in New York and other states  
6 where they overtly meet to promulgate rates, these same defendants then set out to  
7 do the same in other states.

8  
9 89. In other words, as a direct result of these meetings where rates were  
10 agreed to, these same defendants agreed, either expressly or tacitly, to not compete  
11 on rates in other states as well. To compete on rates in other states could and would  
12 imperil their ability to maintain the agreed rate in states like New York.

13  
14 90. As is the case in New York, a lack of regulatory authority over rates  
15 created an environment in which a conspiracy can and did succeed. No agency was  
16 examining why all the rates were virtually identical, and no agency was examining  
17 whether the costs associated with these premiums were reasonable. This is an  
18 environment which is conducive to price fixing.

19  
20  
21 91. In California, there is a lack of regulatory authority and oversight over  
22 title insurance companies. The rates in California are not set as part of a deliberate  
23 state intervention and the state does not and cannot meaningfully renew or approve  
24 these rates. The rates at issue in this case went into effect without review.

25  
26 92. In fact, in February of 2007, the Insurance Commissioner of California,  
27 Steve Poizner issued a statement concluding "that reasonable price competition does  
28

1 not exist for title and escrow services.” (*Insurance Commissssioner Steve Poizner*  
2 *Issues Statement Following Decision by OAL on New Regulations*, California  
3 Department of Insurance, February 22, 2007)

4  
5 **F. Other Indicators of a Lack of Competition and Conditions Conducive to**  
6 **Collusive Rate Setting**  
7

8 93. In addition to the uniformity of rates, other facts suggest that it is more  
9 plausible than not that rates have been set based on an agreement to fix prices.  
10

11 94. In theory, the chain of title should be documented back to its historic  
12 grant of ownership centuries in the past. Fear about a possible title defect in the  
13 distant past is widely used as a justification by title agencies when convincing  
14 property buyers to purchase an owner policy in addition to the lender policy, which  
15 is mandatory to secure a mortgage. The title agency, however, saves much time and  
16 money when the search is limited to one or two transactions. They rely on the  
17 insurance policy to cover the remote chance of missing an earlier but still-valid  
18 claim. If such a claim is asserted and survives the scrutiny of the title insurance  
19 company’s legal department, the expected cost of compensation is likely to be less  
20 than the sum of added overhead costs of routinely tracing back every chain of title to  
21 the earliest registered owner in the distant past.  
22  
23  
24  
25

26 95. Title insurance industry officials tend to justify the large proportion of  
27 the premium retained by the title abstract and settlement agency (from 60 to more  
28

1 than 90 percent) by the alleged high cost of title searching back into the distant past.  
2 In fact, a high proportion of noncommercial properties are searched only through the  
3 most recent transaction. No information is available as to what proportion of claims  
4 originate in the distant past. The industry has never published pertinent statistics. It  
5 would have a marketing incentive to publish these statistics if the risk were  
6 significant; that it has not published these statistics indicates that the risk probably is  
7 only slightly greater than zero.  
8

9  
10 96. Many U.S. homes are being resold three or four times in twenty-five  
11 years. At each of these occasions, an abstract of title will be prepared on the basis of  
12 a more or less thorough review of the available title records, inheritance records,  
13 family records and records of past or current liens against a property. It is  
14 reasonable, therefore, to suspect that the risk of a title defect will decrease every time  
15 a property is sold.  
16

17  
18 97. Title searches have become less labor intensive, especially in large  
19 urban counties and cities. More and more of the information is available online. The  
20 statistical likelihood that a title defect would be overlooked is a closely held  
21 industry secret, but it appears to be so small that many transactions are now insured  
22 on the basis of a search of the last owner's title history or a search into transactions  
23 that occurred during the last twenty-five to thirty-five years. The evidence is strong  
24 that the title insurance industry has achieved a remarkably high level of loss  
25 minimization. Indeed, the national average recovery for a claim on a title insurance  
26  
27  
28

1 policy is approximately 5% of the total premium. On the other hand, the national  
2 average for property insurance is approximately 80% of the total premium collected.

3  
4 98. Thus the costs of production have decreased as has the risk of loss yet  
5 none of these factors has resulted in price competition at the consumer level.

6  
7 99. There is a remarkable absence of rate changes by title insurers over the  
8 past five years, despite declining costs of production, increased number of  
9 transactions and increased revenue per transaction. During a period when costs per  
10 unit of production declined significantly, underwritten title companies and title  
11 insurers maintained excessive rates. The prices charged by title insurers and  
12 underwritten title companies were not and are not responsive to the changing costs of  
13 production or increasing revenue per transaction at a given set of rates. Again, this is  
14 indicia of an agreement not to compete based on price.  
15  
16

17 100. As noted, the title companies engage in illegal rebates and kickbacks  
18 where the title insurer or the underwritten title company provides money, free  
19 services or other things of value to a real estate agent, a lender or homebuilder in  
20 exchange for business referrals. These illegal rebates and kickbacks – a consequence  
21 of reverse competition – show that title insurance rates are supra competitive and that  
22 some portion of the overcharge is passed from the underwritten title company or title  
23 insurer to the referrer of business.  
24  
25

26 101. A lack of competition and the ability to control prices is enhanced by  
27 the fact that there were few title insurer entrants over the period from 1995 through  
28

1 2005 and the number of title insurer groups declined as title insurers acquired other  
2 title insurers. There were few underwritten title company entrants over the 2000 to  
3 2005 period and new entrants were controlled business arrangements whose addition  
4 to the market did not result in greater price competition.  
5

6 102. Access to title plants can be a barrier to entry, but a large barrier to entry  
7 exists due to the established relationships between the entities that can steer the  
8 consumer's title and escrow business and the entities who sell title insurance and  
9 escrow services.  
10

11 103. The title insurance market is highly concentrated – a few title insurers  
12 account for the vast majority of title insurance sales – at both the statewide level and  
13 at the county level in California. For example, three title insurer groups account for  
14 77.4% of the market at a statewide level. At the county level, each individual market  
15 was highly concentrated. The GAO found that First American and Fidelity had a  
16 market share of 66 percent. Such a concentration enhances the ability of companies  
17 to fix prices  
18  
19  
20

21 104. The agreement not to compete based on price is also evidenced by the  
22 fact that no company has marketed its services to consumers, the ultimate purchasers  
23 of the product. This is in marked contrast to real insurance, for example, car  
24 insurance, where the companies compete vigorously with well recognized slogans  
25 such as State Farm's "Like a Good Neighbor," or Allstate's "good hands," or the  
26 cute (to some) GEICO gecko promising low prices.  
27  
28





1 (a) to fix, raise, maintain and stabilize the price of title insurance  
2 throughout California;

3 (b) to fix, raise, maintain and stabilize the terms and conditions of  
4 sale of title insurance in California; and

5 (c) to allocate and divide the market for title insurance in California.

6  
7  
8 109. In the absence of proper regulatory authority and oversight, defendants'  
9 conduct constitutes a horizontal agreement to fix the form, structure, and prices of  
10 title insurance and to allocate and divide the title insurance market in California and  
11 is a *per se* violation of Section I of the Sherman Act.

12  
13 110. Defendants' price-fixing, market allocation and division activity has  
14 been continuous throughout the relevant damages period and has been renewed and  
15 reinforced annually through submissions to the OIC of supposed cost and revenue  
16 information and its periodic submissions of rate changes.

17  
18 111. Through their collective price-fixing, market allocation and division and  
19 manipulation of the regulatory process, defendants have harmed competition by  
20 charging consumers supra competitive prices for title insurance in California,  
21 evidenced in part by the fact that the prices are uniformly higher than compared with  
22 the cost of providing the insurance.

23  
24 112. The aforesaid combination and conspiracy has had the following effects  
25 among others:  
26  
27  
28

1 (a) price competition in the sale of title insurance has been  
2 suppressed, restrained and eliminated;

3  
4 (b) prices for title insurance have been raised, fixed, maintained and  
5 stabilized at artificially high and non-competitive levels; and

6 (c) purchasers of title insurance have been deprived of the benefit of  
7  
8 free and open competition.

9 113. During the period of the antitrust violations by defendants and their co-  
10 conspirators, plaintiff and each member of the Class she represents, has purchased  
11 title insurance and, by reason of the antitrust violations herein alleged, paid more for  
12 such that it would have paid in the absence of said antitrust violations. As a result,  
13 plaintiff and each member of the Class she represents, has been injured and damaged  
14 in an amount presently undetermined.  
15  
16

## 17 COUNT II

### 18 Violation of Cal. Bus. and Prof. Code §§ 16720, *et seq.*

19  
20 114. Plaintiff incorporates by reference the preceding allegations.

21  
22 115. Defendants conduct as set forth above is in violation of the Cartwright  
23 Act of California (Cal. Bus. & Prof. Code §§ 16720, *et seq.*).

24 116. As a direct result of defendants' unlawful acts plaintiffs have paid  
25 artificially inflated prices for title insurance and have suffered injury to their business  
26 and property.  
27  
28

COUNT III

(California's Business & Professions Code §§ 17200, *et seq.*)

117. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of herself and the members of the Class.

118. Defendants' statements and representations constitute unfair, unlawful and deceptive trade practices in violation of the UCL.

119. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California on hundreds, if not thousands, of occasions daily.

120. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' unfair, unlawful and/or deceptive practices by paying a higher price for title insurance than she would or should have absent the conduct complained of.

121. Plaintiff requests that this Court enter such orders or judgment as may be necessary to enjoin the defendants from continuing its unfair, unlawful, and/or deceptive practices, to restore to any person in interest any money which may have been acquired by means of such unfair competition and to disgorge any profits

1 realized by defendants as a result of its unfair, unlawful and/or deceptive practices,  
2 as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for  
3 such other relief as set forth in the Prayer for Relief.  
4

5 **COUNT IV**

6 **UNJUST ENRICHMENT**  
7

8 122. Plaintiff incorporates by reference the preceding allegations.

9 123. This Cause of Action is pled in the alternative to all claims and/or  
10 causes of action at law.  
11

12 124. Defendant has received a benefit from plaintiff and the Class members  
13 in the form of the prices plaintiff and the Class members paid for defendants' title  
14 insurance.  
15

16 125. Defendants are aware of their receipt of the above-described benefit.

17 126. Defendants received the above-described benefit to the detriment of  
18 plaintiff and each of the other members of the Class.  
19

20 127. Defendants continue to retain the above-described benefit to the  
21 detriment of plaintiff and the Class members.  
22

23 128. As a result of defendants' unjust enrichment, plaintiff and the Class  
24 members have sustained damages in an amount to be determined at trial and seek full  
25 disgorgement and restitution of defendants' enrichment, benefits, and ill-gotten gains  
26 acquired as a result of the unlawful or wrongful conduct alleged above.  
27  
28

1 **PRAYER FOR RELIEF**

2  
3 WHEREFORE, plaintiff demands:

4 A. That the alleged combination and conspiracy among the defendants and  
5 their co-conspirators be adjudged and decreed to be an unreasonable restraint of  
6 trade in violation of Section 1 of the Sherman Act;

7  
8 B. That the Court declare that the premiums charged are excessive under  
9 state law and order damages;

10  
11 C. That judgment be entered against defendants, jointly and severally, and  
12 in favor of plaintiff, and each member of the Class it represents, for threefold the  
13 damages determined to have been sustained by plaintiff, and each member of the  
14 Class it represents, together with the cost of suit, including a reasonable attorneys'  
15 fee;

16  
17 D. Each of the defendants, successors, assignees, subsidiaries and  
18 transferees, and their respective officers, directors, agents and employees, and all  
19 other persons acting or claiming to act on behalf thereof or in concert therewith, be  
20 perpetually enjoined and restrained from, in any manner, directly or indirectly,  
21 continuing, maintaining or renewing the aforesaid combination, conspiracy,  
22 agreement, understanding or concert of action, adopting or following any practice,  
23 plan, program, or design having a similar purpose or effect in restraining  
24 competition; and  
25  
26  
27  
28

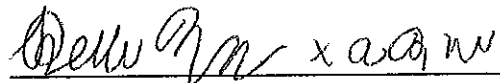


1 E. Such other and further relief as may appear necessary and appropriate.

2 **JURY TRIAL DEMANDED**

3  
4 Pursuant to Rule 38, F.R.C.P., plaintiff demands a trial by jury of the claims  
5 alleged herein.  
6

7  
8 DATED: June 3, 2008

 x a a w

9 Brian Barry  
10 LAW OFFICES OF BRIAN BARRY  
11 1801 Avenue of the Stars, Suite 307  
12 Los Angeles, California 90067  
13 Telephone: (310) 788-0831  
14 Facsimile: (310) 788-0841

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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Alicemarie H. Stotler and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

**SACV08- 620 AHS (ANx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☒ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Mark Moynahan, on behalf of himself and all others  
similarly situated,

PLAINTIFF(S)

v.

FIDELITY NATIONAL FINANCIAL, INC., et. al.  
(see attachment)

DEFENDANT(S).

CASE NUMBER

SACV08-0620 AHS (AMX)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brian Barry, whose address is 1801 Avneue of the Stars, Suite 307. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUN - 4 2008

By: Natalie Honeyeic  
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

Brian Barry (135631: bri Barry1@yahoo.com)  
LAW OFFICES OF BRIAN BARRY  
1801 Avenue of the Stars, Suite 307  
Los Angeles, California 90067  
Telephone: (310) 788-0831  
Facsimile: (310) 788-0841

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Mark Moynahan, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC.,  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY OF FLORIDA,  
CHICAGO TITLE INSURANCE  
COMPANY, NATIONAL TITLE  
INSURANCE OF NEW YORK, INC.,  
SECURITY UNION TITLE INSURANCE  
COMPANY, THE FIRST AMERICAN  
CORPORATION, FIRST AMERICAN  
TITLE INSURANCE COMPANY, UNITED  
GENERAL TITLE INSURANCE  
COMPANY, LANDAMERICA FINANCIAL  
GROUP, INC., COMMONWEALTH LAND  
TITLE INSURANCE COMPANY,  
LAWYERS TITLE INSURANCE  
CORPORATION, TRANSNATION TITLE  
INSURANCE COMPANY, STEWART  
TITLE GUARANTY COMPANY and  
STEWART TITLE INSURANCE  
COMPANY

Defendants.

Case No.

**CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

COPY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Mark Moynahan, on behalf of himself and all others  
similarly situated,

PLAINTIFF(S)

v.

FIDELITY NATIONAL FINANCIAL, INC., et. al.  
(see attachment)

DEFENDANT(S).

CASE NUMBER

SACV08-0620 AHS (ANx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brian Barry, whose address is 1801 Avneue of the Stars, Suite 307. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

JUN - 4 2008

Dated: \_\_\_\_\_

By: NATALIE LONGORIA



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1198

Brian Barry (135631: bri Barry1@yahoo.com)  
LAW OFFICES OF BRIAN BARRY  
1801 Avenue of the Stars, Suite 307  
Los Angeles, California 90067  
Telephone: (310) 788-0831  
Facsimile: (310) 788-0841

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Mark Moynahan, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC.,  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY, TICOR TITLE  
INSURANCE COMPANY OF FLORIDA,  
CHICAGO TITLE INSURANCE  
COMPANY, NATIONAL TITLE  
INSURANCE OF NEW YORK, INC.,  
SECURITY UNION TITLE INSURANCE  
COMPANY, THE FIRST AMERICAN  
CORPORATION, FIRST AMERICAN  
TITLE INSURANCE COMPANY, UNITED  
GENERAL TITLE INSURANCE  
COMPANY, LANDAMERICA FINANCIAL  
GROUP, INC., COMMONWEALTH LAND  
TITLE INSURANCE COMPANY,  
LAWYERS TITLE INSURANCE  
CORPORATION, TRANSNATION TITLE  
INSURANCE COMPANY, STEWART  
TITLE GUARANTY COMPANY and  
STEWART TITLE INSURANCE  
COMPANY

Defendants.

Case No.

**CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

COPY



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> Mark Moynaham		<b>DEFENDANTS</b> Fidelity National Financial, Inc., et. al.	
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Law Offices of Brian Barry 1801 Avenue of the Stars, Suite 307, Los Angeles, CA 90067 Phone: (310) 788-0831		<b>Attorneys</b> (If Known)	

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)  <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:33%;">PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4										
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6										

<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge			
--	--	--	--

<b>V. REQUESTED IN COMPLAINT:</b> JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)	
<b>CLASS ACTION</b> under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>MONEY DEMANDED IN COMPLAINT:</b> \$ _____

<b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Sherman Act request for antitrust injunctive relief	
--	--

<b>VII. NATURE OF SUIT</b> (Place an X in one box only.)					
<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

SACV08-0620

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.